Supreme Court, U.S.
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No. 03-1020

In The
Supreme Court of the United States

MARTIN L. MARKS, DDS,

Petitioner,

v.

THE UNION COUNTY DEMOCRATIC COMMITTEE, *ET ALS.*,

Respondents.

On Petition For Writ Of Certiorari
To The New Jersey Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Do the new standards established by the New Jersey supreme court for filling vacancies that occur shortly before the general election violate the Elections Clause of Article I, Section IV of the United States constitution?

2. Does the Due Process Clause of the Fifth Amendment to the United States constitution prohibit replacement on the ballot of nominated candidates for office within so short a time before the general election that voters cannot make informed electoral choices?

3. Does the Equal Protection Clause of the Fourteenth Amendment to the United States constitution prohibit replacement of candidates for office within so short a time before the general election as to frustrate meaningful debate and campaigning?

4. Do the First Amendment to the United States constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States constitution prohibit candidates for office from withdrawing subsequent to the legislative deadline and transferring their campaign finances to a successor candidate?

PARTIES

Petitioner

Martin L. Marks, DDS is an individual who, as a candidate for election to the office of state senate in New Jersey's 22nd Legislative District, was named as a Defendant in the state court action in lieu of prerogative writ out of which this petition for certiorari arises.

Respondents

The Hon. Joanne Rajoppi, Clerk, County of Union, New Jersey, in her official capacity; Hon. Elaine M. Flynn, Clerk, County of Middlesex, New Jersey, in her official capacity; Hon. Brett A. Radi, Clerk, County of Somerset, New Jersey, in his official capacity; Hon. Peter C. Harvey, Attorney General, State of New Jersey, in his official capacity; and Hon. Ramon De La Cruz, Director of the New Jersey Division of Elections, in his official capacity, were also named as Defendants in the state court action in lieu of prerogative writ out of which this petition for certiorari arises.

The Union County Democratic Committee; Charlotte Defilippo, Chairperson of the Union County Democratic Committee; the Somerset County Democratic Committee; Elia A. Pelios, Chairperson of the Somerset County Democratic Committee; the Middlesex County Democratic Committee; Joseph C. Spicuzzo, Chairperson of the Middlesex County Democratic Committee; and individuals Elizabeth Genievich; Geraldine C. Farley; and Maureen Coxwell were named as Plaintiffs in the state court action in lieu of prerogative writ out of which this petition for certiorari arises.

Nicholas P. Scutari, in his capacity as the Democratic Party "replacement" candidate for the office of state senator in the 22nd Legislative District of the State of New Jersey, was made a Respondent upon the Petitioner's filing with this court in October 2003 of an application for emergent relief under Rules 22 and 23.

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STATEMENT OF JURISDICTION

The orders to be reviewed were entered by the New Jersey supreme court on October 15, 2003; by the New Jersey Superior Court, Appellate Division on October 10, 2003; by the New Jersey Superior Court, Law Division on October 3, 2003; and by the New Jersey Superior Court, Law Division on September 29, 2003. The Petitioner believes that Article I, Section 4, Clause 1 (the Election Clause) of the United States constitution; the Equal Protection Clause of Amendment XIV; the Due Process Clause of Amendment V; and Amendment I to the United States constitution confer jurisdiction upon this court to review such state court orders on a writ of certiorari.

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE I, Section 4, [1]
The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

AMENDMENT I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV, Section 1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

OPINIONS AND ORDERS ENTERED BELOW

Supreme Court of New Jersey,
Docket Nos. M-333 and C-370,
Dated October 15, 2003 ..... Pa 85

Superior Court of New Jersey, Appellate Division,
Docket No. A-____,
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Superior Court of New Jersey, Law Division,
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STATEMENT OF THE CASE

The Petitioner respectfully submits that federal questions were raised in this matter through state action taken by the New Jersey supreme court (which, first, revised a legislative enactment and, thereafter, denied both his emergent application for a stay of lower court proceedings and his emergent petition for certification) (Pa 85); the appellate division of the New Jersey superior court (which likewise denied his emergent appeal and application (Pa 86) to stay an order entered by the state trial court in proceedings on order to show cause, summarily affirming the trial court's grant of injunctive and declaratory relief as well as the trial court's order denying a stay of such relief (Pa 87)); and the New Jersey Superior Court, Law Division (which allowed and directed, *inter alia*, the withdrawal and replacement of the name of Senator Joseph Suliga on the ballot for the office of New Jersey state senator in the State's November 4, 2003 general election (Pa 89)). On October 23, 2003, the Petitioner requested that this honorable court either stay enforcement of the subject state court orders pending further proceedings, *e.g.*, the issuance of a writ of certiorari pursuant to 28 U.S.C. § 2101(f), or, in the alternative, bar the State of New Jersey and its subdivisions, and their agents and agencies, from allowing votes to be cast and/or counted in the November 4, 2003 election for the office of senator in New Jersey's 22nd Legislative District. Justice Souter, in his capacity as Circuit Justice of the United States Third Circuit, denied that application, Application No. 03-A351 (October 24, 2003). (Pa 136).

The district courts were ostensibly incapable of granting the emergent relief sought by the Petitioner in this matter involving election to a state legislative office, based upon the precedent of this court's denial of both a similar application, *Douglas Forrester, et al. v. New Jersey Democratic Party Inc., et al.* (Docket No. 02-A289)

(submitted to Justice Souter, sitting as Circuit Justice for the Third Circuit under Rule 22 on October 3, 2002), and that previous applicant's petition for a writ of certiorari to review a functionally equivalent case, *Id.* (Docket No. 02-555), filed on October 8, 2002 (No. 53,618, Docketed on October 10, 2002), appl. denied *per curiam* (October 7, 2002), pet. denied December 9, 2002.

The Petitioner sought emergent relief from this honorable court on the premiss that his federal constitutional rights would otherwise be infringed, and that those of anyone then seeking to exercise the franchise in his voting district would also be infringed.[1]

Seeking emergent relief, the Petitioner contended that anytime a "last-minute switch" of candidates is needed to rescue one of the two nationally dominant political parties from its nominee whose eleventh-hour polling profile dictates replacement in order to "preserve" an otherwise "safe" election district or legislative majority, and the same is allowed, future switching will be more apt to occur. If the maintenance of a dominant party's power requires such an expedient elsewhere, he argued, "late replacement" will likely be transplanted to other elective races in which politically inconvenient legislative limits can be conveniently extended by courts. Thus, Petitioner Marks suggests, the petition now submitted to this honorable court reflects the truth, in hindsight, of a previous petitioner's warning in 2002 about a state supreme court decision that "threatens to change the face of American politics." Petition for

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[1] The Petitioner, as Applicant in October 2003 for emergent relief in the form of a stay, also suggested that in such cases, the withdrawing candidate's "war chest" may be directly or indirectly funneled into the hands of the replacement candidate, who, as in the instant case, would then be able to independently raise a series of additional contributions from the same donors in the amount of the contributors' individual limits.

a Writ of Certiorari, at 21 (dated October 4, 2002 and filed October 8, 2002), *Id.*[2]

Incumbent New Jersey state senator for the 22nd Legislative District, the Honorable Joseph Suliga received the New Jersey Democratic Party's nomination upon winning his party's primary election in June 2003. However, as Senator Suliga stated in an undated letter made public on September 26, 2003,

> [a]fter being evaluated by [a detoxification and treatment center], [he] decided . . . to enter into an intensive alcohol treatment program . . . . [and he] [t]herefore, . . . decided [that he would] not seek re-election as Senator of the 22nd Legislative District. (Pa 92).

At that time he so notified the County Clerks of Union County, Middlesex County, and Somerset County, New Jersey, portions of which comprise the 22nd Legislative District. He also informed the chairpersons of the Union, Middlesex and Somerset County Democratic Committees that he had withdrawn his candidacy.

According to press accounts surrounding Senator Suliga's announcement in this regard, the candidate's "favorable" rating in likely voter opinion polls had plummeted in the wake of publicity over an incident involving the State Senator's alleged involuntary

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[2] The rule of law represented by *Democratic State Committee v. Samson,* 175 N.J. 172, 175 N.J. 178 (2002), *cert. den. Douglas Forrester, et al. v. New Jersey Democratic Party Inc., et al.,* Docket No. 02-555 (December 9, 2002), engendered much criticism. For example, the *New York Times* published an editorial written by political scientist Mr. William G. Mayer on October 2, 2002 that made two points: (1) Late substitution is bad public policy because the electorate lacks sufficient time to evaluate the new candidate; and (2) It is immoral, during a campaign season, to change the rules of an election.

expulsion from an Atlantic City casino by security personnel, in response to remarks that he reportedly made to a female fellow casino patron, followed by her filing of criminal charges against him. (*See* Pa 93, Pa 95, Pa 97, Pa 99 and Pa 100.) Some of these accounts also referenced a previous incident at a Point Pleasant, New Jersey retail store; though criminal charges were never filed, the police were reportedly summoned when Senator Suliga allegedly made similar remarks to a female employee of the surf shop and inappropriately touched her. (*See* Pa 97, Pa 100.)

New Jersey's statutory election law prescribes the procedure that may be followed by political parties to replace a candidate nominated as the result of the primary election who, regardless of the reason, withdraws anytime 51 days or more before the general election. Specifically, N.J.S.A. 19:13-20 (hereinafter, the "Vacancy Statute") provides in pertinent part that:

> In the event of a vacancy, howsoever caused, among candidates nominated at primaries, which vacancy shall occur not later than the 51st day before the general election, or in the event of inability to select a candidate because of a tie vote at such primary, a candidate shall be selected in the following manner:
>
> a. (1) In the case of an office to be filled by the voters of the entire State, the candidate shall be selected by the State committee of the political party wherein such vacancy has occurred. . . .
>
> (3) In the case of an office to be filled by the voters of a portion of the State comprising all or part of two or more counties, the candidate shall be selected by those members of the county committees of the party

wherein the vacancy has occurred who represent those portions of the respective counties which are comprised in the district from which the candidate is to be elected. . . .
N.J.S.A. 19:13-20a.

Subsection d. of the Vacancy Statute requires, in part, that:

d. A selection made pursuant to this section shall be made not later than the 48th day preceding the date of the general election, and a statement of such selection shall be filed with the Secretary of State or the appropriate county clerk, as the case may be, not later than said 48th day, and in the following manner:

(1) A selection made by a State committee of a political party shall be certified to the Secretary of State by the State chairman of the political party.

(2) A selection made by a county committee of a political party, or a portion of the members thereof, shall be certified to the county clerk of the county by the county chairman of such political party; except that when such selection is of a candidate for the Senate or General Assembly or the United States House of Representatives the county chairman shall certify the selection to the State chairman of such political party, who shall certify the same to the Secretary of State. . . .
N.J.S.A. 19:13-20d.

Ruling in the case of *Democratic State Committee v. Samson,* 175 N.J. 172, 175 N.J. 178 (2002), *cert. den. Douglas Forrester, et al. v. New Jersey Democratic Party Inc., et al.,* Docket No. 02-555 (December 9, 2002), the New Jersey supreme court felt compelled to liberally construe the 51-day withdrawal "deadline" set forth by the legislature in this enactment. In particular, the state supreme court found it necessary to exercise its "equitable powers" as a means of determining that the time period explicitly specified by the Vacancy Statute was not "material"; otherwise, the court reasoned, all of the State's voters would be deprived of a choice of candidates.[3] In that case in 2002, incumbent United States Senator Robert Torricelli thus withdrew his candidacy for re-election and was replaced on the ballot following expiration of the statutory withdrawal deadline. He did so in circumstances similar to those of New Jersey 22nd Legislative District Senate candidate Suliga in October 2003. U.S. Senator Torricelli's replacement on the statewide general election ballot pursuant to the state high court's ruling was followed by this honorable court's denial, *per curiam*, of his opponent's October 3, 2002 application for an emergency stay of the New Jersey supreme court's order expanding the Vacancy Statute; his replacement's election to the United States Senate; and this court's denial of his challenger's petition for a writ of certiorari.

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[3] This conclusion overlooked the possibility that if U.S. Senator Torricelli were not replaced on the ballot, his opponent might have garnered fewer votes on Election Day; we will never know with certainty what the election's outcome would have been. However, Senator Torricelli might have remained on the ballot and received a majority of votes (as did deceased Missouri Governor Mel Carnahan in a U.S. Senate election three years ago, when he died in a plane crash shortly before the election, resulting in the succeeding Governor's appointment, after the election, of his widow, Jean Carnahan, to serve as Senator). Senator Torricelli could have then withdrawn and been replaced by the Democratic Governor after the election, with a special election to follow.

Immediately following Senator Suliga's stated withdrawal, the three Democratic county political parties in his senatorial district and their chairpersons, together with one person qualified to vote in each of the counties within the District, filed an action in lieu of prerogative writ in the New Jersey superior court. The Plaintiffs brought the action in their names and that of a replacement Democratic Party candidate for the office of state senate in the 22nd Legislative District, yet to be selected, praying in their verified complaint for declaratory and injunctive relief.

On September 29, 2003, an Order to Show Cause with Temporary Restraints (Pa 104) issued from the trial court naming as Defendants the Petitioner, in his capacity as the Republican Party candidate for the office of state senator in the District; the New Jersey Attorney General; and, in their official capacities, the three County Clerks and the Director of the State Division of Elections (who, with each Office of the County Clerk of the county in which such an election is held, is statutorily charged with responsibility for administering the state legislative election). The court's order set down a hearing date of October 3, 2003 and required the parties defendant to show cause why Senator Suliga should not be replaced as the Democratic Party's 22nd Legislative District candidate for senator. The show cause order contemplated that the relief requested in the verified complaint would otherwise be available, provided that (1) another legally qualified Democratic senatorial candidate were selected in three days or less according to the Vacancy Statute procedure for withdrawals at least 51 days before the election, and further provided that (2) it would be administratively feasible for ballots bearing that "replacement candidate's" name to be prepared for voter use at the polls on the election date and for similar absentee ballots to be printed and distributed to all those requesting them before the statutory absentee ballot deadline.

The three county Democratic Party Plaintiffs then selected a replacement candidate, on October 2, 2003.

On the return date of the order to show cause, October 3, 2003, counsel for the Petitioner requested evidentiary inquiry (Pa 29, at lines 1-8; Pa 41-42), urging the lower state court to determine whether, in light of his need for "intensive treatment for alcoholism", Senator Suliga had also chosen to resign or take a leave from his state senate seat or his employment as Chief Financial Officer of the City of Linden, New Jersey. (Pa 33-34 at lines 8-21). The trial judge specifically declined to look into, or permit the litigants to in any way examine, the nature or duration of the withdrawing candidate's reason(s) for requesting that his name be removed from the ballot. (Pa 43-45, at lines 10-6).

The Petitioner also asked the lower court to take account of certain facts already before it by way of a certification submitted in opposition to the relief requested by the Plaintiffs (labeled, "Certification of Larry Weitzner" [Pa 109]) and a document copy annexed to Mayor Marks' opposition brief (a copy of a two-page public record supplied by Senator Suliga to the New Jersey Election Law Enforcement Commission labeled, "Report of Contributions and Expenditures" [Pa 114-115]); the latter is dated June 21, 2003 and it purports to state the finances of the "Suliga for Senate" campaign. (Pa 49-51, at lines 6-5). In particular, Mayor Marks respectfully requested that New Jersey Superior Court Assignment Judge, the Honorable Edward W. Beglin, Jr. consider, and seek additional evidence bearing upon, certain campaign finance law questions, discussed *infra*, which the Petitioner suggested are critical because they are directly implicated by any replacement of Senator Suliga under the state supreme court's broadened interpretation of the Vacancy Statute, *Democratic State Committee v. Samson, Id.* The state court trial judge refused to do so, took no testimony, and made no findings on the fund-raising inequities that Mayor Marks

contended would result from replacement, apart from finding the issue "premature, [insofar] as [at] this moment no such rights have been harmed." (Pa 79-80, at lines 13-24). The trial court also found that a grant of the relief requested by the Plaintiffs would not "significantly impact upon" the voters' ability, one month prior to Election Day, to differentiate the candidates' positions and make an informed choice between Mayor Marks and Senator Suliga's replacement. (Pa 78).

The record below shows that Senator Suliga would be able to lawfully transfer to his "replacement" in excess of $132,000 from the more than $189,000 in campaign funds that he raised during the current election and reporting cycle (Pa 115). The Petitioner contends that the record is also clear as to the ability of the "replacement candidate" to receive additional contributions to his 22nd Legislative District State Senate campaign from those who previously donated the legal maximum to Senator Suliga.

LEGAL ARGUMENT

The Petitioner respectfully submits the following Preliminary Statement as a preface to the numbered Points of legal argument which follow.

Preliminary Statement

Many years ago, the Democratic Party chose to withdraw the candidacy of Horace Greeley, rather than allow the republic to suffer the "affrontery" of electoral votes being cast for his Presidency between the time of Greeley's death and the meeting of electors in December 1872.[4]

In October 2002, and again last year, political parties that nominated candidates for United States Senate and state senate offices in New Jersey faced a similar choice long after concluding the primary election process. The difference between the Greeley candidacy and New Jersey's contemporary parallels was not only a matter of time. Rather than resulting from the candidate's death or incapacity, the issue of withdrawal was precipitated by the New Jersey nominees' poor performance in public opinion polls. Additionally, in both contemporary cases, the swing in public opinion hinged upon allegations of questionable conduct on the part of the incumbent senator.

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[4] The process followed in President Grant's election and assumption of office in 1873 has been rationalized under the analysis that candidate Greeley, having deceased, was no longer a "person" within the meaning of the Twelfth Amendment to the United States constitution. However, three (ultimately uncounted) electoral votes were cast for Horace Greeley; his other electors scattered among four different candidates the electoral votes accruing from Greeley's popular vote victory in six states.

This court stated in *Anderson v. Celebrezze,* 460 U.S. 780 (1983), that recurrent issues can, and should, be decided even after a particular case has arisen and been addressed. Bearing that axiom in mind, the Petitioner respectfully suggests that the importance of this cause is so great as to merit the renewed attention of our Nation's highest tribunal, notwithstanding that in 2002 this honorable court denied review, in a closely analogous state election context, of the first following issue of federal constitutional law.

POINT I: The new standards established by the New Jersey supreme court for filling vacancies that occur shortly before the general election violate Article I, Section IV, Cl. 1 of the United States constitution because they conflict with an explicit legislative enactment within the State's overall electoral scheme.

By its 2002 ruling in the case of *Democratic State Committee v. Samson*, 175 N.J. 172, 175 N.J. 178 (2002), the New Jersey supreme court, through an exercise of judicial might, in effect, amended the unambiguous statutory text of an enactment of the New Jersey legislature. The state high court's intercession into "the thicket" of politics despite the Honorable Justice Frankfurter's well-known admonition, was nothing less than a usurpation of lawful authority vested exclusively in the legislative branch of State Government. That expedition by the state supreme court not only deviated from the separation of powers concept of New Jersey constitutional law but also shattered a venerable history of judicial restraint and much precedent. The Petitioner now comes to this honorable court respectfully suggesting that the lower court's ruling in the *Samson* case, essentially affirmed as well as followed on October 15, 2003 in Mayor Marks' case, violated the United States constitution, which expressly provides that,

> [t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof;* . . . .
> U.S. Const. art. I, § IV, cl. 1. (Emphasis supplied.)

Having usurped the legislature's power under the federal constitution *"exclusively* to define the method" of electing Senators, *McPherson v. Blaker*, 146 U.S. 1, 27 (1892), New Jersey's highest court thereby also stripped any limitation under this legislative prerogative that might otherwise remain available for reference by a federal district court reviewing the Vacancy Statute's application to state legislative contests. Thus, the Petitioner respectfully submits that the "general rule," under which "this Court defers to a state court's interpretation of state statute," *Id.,* is inapposite. *Bush v. Gore*, 531 U.S. 98 (2000). *See* also *Bush v. Palm Beach County*, 531 U.S. 70, 77 (2000).

Unlike the state supreme court, this court showed enormous restraint in determining in 2002 not to review *Democratic State Committee v. Samson*, *Op cit.,* and to, instead, respect the principle of deference to states in matters involving election law. However, this court's grant of certiorari in the *Samson* case presumably would have affected the slim margin on which the 2002 senatorial majority was balanced against the backdrop of then-imminent congressional elections. Moreover, at that time, the momentous political and cultural controversies underlying the cases of *Bush v. Gore*, 531 U.S. 98 (2000), and *Bush v. Palm Beach County*, 531 U.S. 70 (2000), had been judicially settled for just two short years.

This honorable court likewise showed great restraint in denying Petitioner Marks' October 2003 application for emergent relief in the form of a stay pursuant to Rules 22 and 23. On the other hand, a grant of the petition now before this court will not impact

upon a statewide election of national significance, even if applied retrospectively. The Petitioner also respectfully submits that this honorable court's decision to consider halting the corrosive process which affected Mayor Marks and the voters of New Jersey's 22nd Legislative District, and if unchecked will harm other electoral districts in future election cycles and possibly other jurisdictions, would be better understood now than roughly a year ago.

Nor do the issues underlying this petition pivot solely on the Elections Clause, as discussed *infra.*

Nor would this court's grant of Mayor Marks' petition amount to a similar judicial intrusion in a province that is reserved to other authorities (*i.e.,* the states). For example, in *Oregon v. Mitchell*, 400 U.S. 112 (1970), this court held that, even in federal elections, the Elections Clause does not confer upon the federal government power that properly resides in the hands of the states; however, Justice Black pointed out that,

> [n]o function is more essential to the separate and independent existence of the States and their governments than the power to determine *within the limits of the Constitution* the qualifications of their own voters for state, county, and municipal offices and the nature of their own machinery for filling local public offices.
> *Id.* at 125. (Emphasis supplied.)

Thus, a constitutional state legislative function now requires this court's protection.

The Petitioner respectfully suggests that this court should evaluate his petition and the precedent of the *Samson* case in light of a mounting sense of cynicism on the part of voters in this New Millennium, as well as what has been described by commentators as

a perception of loss of voter empowerment, together with the public's growing distrust of "career politicians" and "political professionals".[5]

Petitioner Marks, a practicing dentist who currently serves as Mayor of a New Jersey municipality of moderate size, respectfully submits that even the beneficiaries of *Samson's* "legislative re-write" could not ignore such voter perceptions. Public distrust of "candidate-switching" certainly was not far from the minds of those 22nd Legislative District Democrat leaders quoted in the Wednesday, October 1, 2003 edition of the "Star-Ledger" newspaper as being wary of a "double switch" of candidates upon Senator Suliga's withdrawal announcement. (Under the headline, "Democrats wary of double switch on ballot: Assemblywoman's bid for Senate risks vacancy in 22nd District race", that newspaper reported on the deliberations behind the "replacement candidate" selection process that ultimately culminated on October 2, 2003, when the three county political parties in the District met and conduct state voice votes.)

The Petitioner respectfully requests that this court also consider the *Samson* rule in light of the legislative activity to date responding to the state supreme court's interpretation of the Vacancy Statute, consisting solely of two bill introductions.[6]

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[5]This trend may have found expression in the recent California Gubernatorial Recall Election.

[6] If enacted, Assembly No. 2878 (sponsored by Assemblypersons Rick Merkt and Guy R. Gregg, introduced October 10, 2002) and Senate No. 2096 (a bipartisan bill sponsored by Senators Shirley K. Turner and Robert Littell), respectively, would have amended the Vacancy Statute by either (1) flatly prohibiting "less-than-51 day" replacements, explicitly, or (2) absolutely prohibiting replacement within 30 days of the general election yet allowing replacement between the 51st and 30th days before Election Day in cases of the candidate's death or physical or mental incapacitation.

In short, the Petitioner contends, respectfully but emphatically, that the rule of law represented by the precedent of *Democratic State Committee v. Samson*, 175 N.J. 172, 175 N.J. 178 (2002), *cert. den. Douglas Forrester, et al. v. New Jersey Democratic Party, Inc., et al.*, Docket No. 02-555 (December 9, 2002), is both bad public policy and constitutionally defective, under the Elections Clause, particularly as it applies to Mayor Marks in the instant circumstances.

POINT II: The Due Process Clause of the Fifth Amendment to the United States constitution prohibits the disenfranchisement of voters by replacement on the ballot of nominated candidates for office within so short a time before the general election that voters cannot make informed electoral choices.

Both at the trial level and on appeal before the state courts, the respondent political parties focused their argument on the administrative feasibility of replacing the withdrawing candidate

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Though one authoritative commentator (Ingrid W. Reed, Director of the New Jersey Project at the Eagleton Institute of Politics at Rutgers University, quoted in an article in the October 9, 2003 Newark "Star-Ledger" newspaper titled, "GOP thwarted in effort to block Scutari: Judge rejects party's request") has stated that,

> [t]he Republicans are very consistent and they have pointed out, that there should be a more definitive rule in our state elections code on replacement of candidates on the ballot . . . ,

the state legislature does not appear ready to resolve the problem, which some of its members have acknowledged as being attributable to the state supreme court's "judicial activism". (Assembly No. 2878 is even more pointed in addressing the Elections Clause issue; *see* the text of Section 1 of Assembly No. 2878 as well as the Statement to this bill summarizing its purpose and effect. [Pa 128-129, at lines 8-33; Pa 135, at lines 32-39.])

with a substitute selected by the Democratic Committees in the 22nd Legislative District. In support of their position, the Plaintiffs correctly relied on *Democratic State Committee v. Samson*, 175 N.J. 172, 175 N.J. 178 (2002). However, what was not addressed in the *Samson* case is the fact that the process of "late replacement" denies to those eligible to vote the ability to cast an informed ballot. This is particularly true in the case of a person who would vote by absentee ballot. Unless the relief sought by the Petitioner is granted by this court, New Jersey voters will again and again be denied due process – denied their right to vote by a lack of sufficient time to evaluate the candidates and, on that basis, to make an informed choice between them.

By allowing a last-minute ballot switch to occur, the lower courts' rulings went far beyond "statutory interpretation" of N.J.S.A. 19:13-20, in which the state supreme court claimed it was engaging in the *Samson* case. The lower courts infringed the right of voters to be informed voters, robbing them of the ability to make a reasoned choice. State action of that ilk is a direct and flagrant departure from the dictates of both the Fifth Amendment Due Process Clause and the Due Process Clause of the Fourteenth Amendment to the United States constitution. Because the 22nd Legislative District's voters were afforded only the amount of time before November 4, 2003 that was available to them under the trial court's order, they could learn little about the new state senate candidate, Mr. Nicholas P. Scutari, whose candidacy was not forged in the cauldron of a primary election and vigorous debate with the Petitioner. At best, only some of the District's voters had a chance to learn about the "replacement candidate"; others, such as absentee, overseas and military voters, barely had time to punch out the chads or darken the ovals on their ballots, much less find out what the new candidate stands for.

POINT III: The Equal Protection Clause of the Fourteenth Amendment to the United States constitution prohibits the disparate treatment of candidates for office by their opponents' replacement within so short a time before the general election as to frustrate meaningful debate and campaigning.

This court recognized in *Lubin v. Panish*, 415 U.S. 709 (1974), that a candidate's civil rights are inextricably bound up with those of the voter. In the instant case and that of *Samson*, the exercise by the court below of its "equitable" power to rewrite New Jersey electoral legislation adversely impacted upon the candidate's rights under the Equal Protection Clause of the Fourteenth Amendment to the U.S. constitution, as well as the constitutional right of voters to make an informed choice between candidates such as the Petitioner and the "replacement candidate". Moreover, upon application of the state court's formula for revision of the Vacancy Statute in the instant circumstances, the Petitioner's right to seek office runs headlong into the contribution ceiling of the New Jersey Campaign Contribution and Expenditure Reporting Law, N.J.S.A. 19:44A-1, *et seq.* (hereinafter, the "State Campaign Finance Law"), to which only he, and not his new opponent, was subject. Specifically, under orders such as those from which the Petitioner seeks relief, "replacement candidates" will always enjoy a fund-raising advantage over candidates in the position of Mayor Marks -- together with the other advantages accruing from the state supreme court's rewriting of the Vacancy Statute. (This result actually contravenes the overall policy goals of the State Campaign Finance Law: public disclosure, equality of access to campaign funding, and limitation of the potential for "*quid pro quo* relationships" between elected officials and contributors.)

The right to vote is a fundamental right. As such, state action burdening that right is subject to strict scrutiny under the Fourteenth Amendment's Equal Protection Clause. *Dunn v. Blumstein,* 405 U.S. 330 (1972). Both courts and scholars have recognized the ability to make an informed, reasoned choice not only as being implicit in the right to vote, but that the cornerstone our democratic republic is free, lively and informed debate. *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214 (1989) (stating that "debate on the qualifications of candidates is integral to the operation of the system of government established by our Constitution."); 0. Fiss, *Money and Politics*, 97 *Colum. L. Rev.* 2470, 2479 ("Democracy not only vests the choice of government officials in the citizens, it also presupposes that the citizens' choices will be informed. "); Mark C. Alexander, *Electoral/Judicial Reform: Don't Blame the Butterfly Ballot: Voter Confusion in Presidential Politics,* 13 *Stan. L. & Pol'y Rev.* 121 (2002) ("American deliberative democracy depends upon the ability of candidates to engage in an open and informative dialogue to nurture and strengthen the democratic principles that define America"). Thus, the Petitioner has a right to campaign in a meaningful way against an identified opponent.

As the authorities cited above recognize, the right to vote consists of more than a right to physically push a button, punch a voting card or place a check mark next to a name. Without a minimal, reasonable period of time to evaluate candidates during electoral debate, the right to vote would be devoid of substance. Thus, Mayor Marks respectfully submits, the right to vote, a fundamental right, includes the voter's corresponding entitlement under federal law to make a deliberate choice -- one based on her assessment of each of the candidates within a sufficient time to evaluate their positions. Further, as a candidate, he has a corresponding constitutional right to debate an identified adversary.

The Petitioner respectfully submits that by focusing solely on the administrative feasibility of filling a vacancy, and by disregarding any consideration of facts supporting legal "cause" for the less-than-51 day withdrawal, the lower courts improperly overlooked the potential to deprive him, as a candidate, of meaningful debate. Doing so also deprived voters -- especially absentee voters (including those serving in military and diplomatic capacities overseas in places like Iraq and Afghanistan) -- of the opportunity to sufficiently evaluate the "replacement candidate". Instead, those voters were left to rely on the judgment of a handful of county political party committee members, led by non-elected partisans, concerning qualifications of a candidate who was not even a runner-up in the primary election. Though the recommendations of political party leaders can be a factor relied on by voters in determining how to cast their vote, others, such as a candidate's substantive position on the issues germane to her office, are much more important. Alexander, *supra*. at 122 (who suggests five factors considered by voters in choosing a candidate: the candidate's substantive positions on the issues, the tactical/political ability of the candidate; the candidate's attractiveness, charisma and likability; recommendations from political party leaders; and the candidate's vision and general leadership ability).

In the year 2002, the state supreme court discounted Republican U.S. Senate candidate Douglas Forrester's argument that Democratic U.S. Senate candidate Torricelli's eleventh-hour replacement would serve as an open-ended precedent for future switching of candidates who are failing at the polls. *Democratic State Committee v. Samson*, 175 N.J. 178, at 197-199. Chief Justice Deborah Poritz stated the lower court's assumption that, because "it is difficult for any party logistically, politically and financially to replace a candidate close to the election", last-minute candidate switches would seldom occur. *Id.* at 187. Senator Suliga's

replacement demonstrates that, in the "20/20" gaze of hindsight, this assumption by the Supreme Court of New Jersey was unfounded.

Senator Suliga's withdrawal and the filling of his vacancy also controverted the assumption that politics will inhibit applications for exceptions to the Vacancy Statute. The state supreme court concluded that candidate-switching would not be viewed negatively by the electorate, and that switching candidates would invigorate the two-party system. This judicial prediction has also proven inaccurate.

Permitting a late candidate switch in the 22nd Legislative District in 2003 only confirmed continued dominance by a single well-financed party. Without a "late switch", and with Senator Suliga's name on the ballot, candidate Marks' chances of winning the election would have greatly increased. In this sense, it was state judicial action that defeated candidate Marks, robbing him of a meaningful campaign against an identified candidate.

Moreover, if "eleventh-hour replacement" continues in the state courts, the electoral prospects of any non-majority candidate such as the Petitioner will continue to be diminished. Thus, "less-than-51 day replacement" *does not* foster competition within the two-party system.

The Petitioner respectfully submits that these two New Jersey Vacancy Statute cases alone likewise show that money -- the "Mother's milk of politics" -- is no object and that payment of additional administrative expenses is not an issue. The political, logistical and financial aspects of switching candidates at the "eleventh hour" have not deterred, and will not deter, the political parties in the Suliga and Torricelli examples or other, future cases – all at a higher expense: that of candidates and voters who are constitutionally entitled to meaningful electoral debate.

POINT IV: The First Amendment to the United States constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States constitution prohibit the New Jersey supreme court from sanctioning candidates' withdrawal subsequent to legislative deadlines and transfer of their campaign finances to a successor candidate.

Since at least 1976 this court has recognized and respected the free speech and free association components of election campaign contributions, which serve to enable the debate that is so fundamental to free, democratic elections. *Buckley v. Valeo,* 424 U.S. 1 (1976). The court has applied a lower level of scrutiny to limitations on contributions than their expenditure, *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 378-88 (2000). Nonetheless, if any state acts, as in Mayor Marks' case, to curtail political debate by limiting not just the time available to one candidate before election eve to campaign and define herself and her opponent, but also by limiting the relative size of her campaign fund, important federal constitutional rights are at stake. Where, as here, a state does so through its judiciary rather than through its legislature or its administrative agency apparatus, the fundamental rights requiring this court's protection are jeopardized no less.

The Petitioner respectfully submits that this honorable court is obligated to correct any state process whereby lower court injunctive and declaratory orders can routinely sanction replacement on the ballot of candidates such as Senator Suliga, who may then transfer substantial sums (*e.g.*, as much as $132,000) to a successor candidate (*see* Pa 115), directly and through various political party conduits but with impunity in any case. (*See* Pa 110-111). These funds are not the "replacement candidate's" under legislation such as

New Jersey's State Campaign Finance Law (Pa 113), but they will greatly assist in electing that successor.

The Petitioner, in contrast, had at his disposal no lawful mechanism by which to replicate the $132,000 available to the "replacement candidate" from Senator Suliga. (This was not a factor in *Democratic State Committee v. Samson*, 175 N.J. 172, 175 N.J. 178 (2002), because a candidate can fund a campaign with his own money, without limit, under N.J.A.C. 19:25-11.3, as did Republican U.S. Senate candidate Douglas Forrester.)[7]

In the instant case, the lower court never found the facts pertinent to such transfers, enabling it to label the issue as "speculative". (Pa 79-80, at lines 13-23). However, the Petitioner raised this point in the brief submitted to the trial court and on oral argument at the show cause hearing, requesting that the court make evidentiary findings after conducting a hearing into this issue. (Pa 29, at lines 1-5). This "catch-22" resulted in a record that the trial court denied Mayor Marks any ability to effectively create, beyond now arguing, based upon the certification filed below (Pa 109-113), that the funds in question were transferable to the "replacement candidate" immediately upon application of the New Jersey supreme court's *Samson* doctrine.

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[7] When the circumstances involving "war chest" transfer outlined above are combined with the successor candidate's ability to lawfully seek out and obtain, in his own name, funds in amounts up to the individual contribution limit (to "double-dip"), having already received amounts transferred by the withdrawing candidate, the federal constitutional injury is compounded.

The Petitioner respectfully contends that "double-dipping" as allowed by the state supreme court in the case at bar further threatens the integrity of the electoral process. "Replacement candidates" can normally be counted upon to follow the *Democratic State Committee v. Samson* procedure, permitting substantial funds transfers as well as the amassing of additional individual contributions from the same persons in the name of the candidate who was safely "switched-in".

This court has recognized the importance of fairness, if not parity, in state and congressional regulation of campaign financing, stating that, " . . . one of the essential features of democracy is the presentation to the electorate of varying points of view." *FEC v. National Conservative Political Action Committee*, 470 U.S. 480, 498 (1985). If candidates are disparately funded, democratic debate will suffer.

Under the Equal Protection Clause of the Fourteenth Amendment to the United States constitution, states must govern impartially and ensure that all persons similarly situated are treated alike. J*ohnson v. Paparozzi*, 219 F. Supp. 2d 635 (D.C.N.J. 2002). An equal protection claim arises when an individual contends that he is receiving different treatment from that received by other individuals similarly situated. *Id.*, at 635. In the instant case, candidate Marks' free speech rights are also implicated, U.S. Const. amend. I.

The Petitioner respectfully contends that the legal presumption of constitutionality extending to legislative enactments should not extend to a judicially-carved exception to a statute -- here, the Vacancy Statute.

As Mayor Marks argued before the lower courts, a court fashioning an equitable remedy sought by one party may not violate another party's constitutional right. Because the rights to vote, to seek office, and to associate with like-minded voters are fundamental rights, *Anderson v. Celebrezze*, 460 U.S. 780, at 788 (1983), inquiry in this vein begins with the issue of disparate treatment. The unequal treatment of candidate Marks in this regard is indisputable given Senator Suliga's ability to lawfully transfer to various party committees the cash on hand in his campaign coffers.

It is sometimes said that, "Money is the mother's milk of politics", and recent campaign finance statistics show an alarming trend in this regard, particularly in the State of New Jersey. Far from

being a "speculative harm", as the trial court termed this situation (Pa 79-80, at lines 17-23), the withdrawing candidate's ability to easily, swiftly and legally effect these transfers to his successor constitutes a gargantuan monetary advantage to the "replacement candidate".

Mayor Marks respectfully suggests that his special disadvantage in terms of disparate funding should be analyzed in the "less-than-51 days until Election Day" context in which it occurred under the lower courts' orders. The "home stretch" of any campaign is critical but that phase of a state senate contest is especially so in an "off-year" (non-presidential, non-gubernatorial) election.

The replacement candidate's huge economic advantage over the Petitioner resulting from the subject lower court orders is not merely unfair and unequal. It was one that the Petitioner did not create. He respectfully contends that this disadvantage to his campaign for office in the 22nd Legislative District was also one that he realistically could not have overcome. His opponent's funding advantage meant that it was impossible for candidate Marks to communicate with voters as frequently and effectively as the "replacement candidate". He was denied equal opportunity to fund the principal form of current election politicking, electronic and print media, which is expensive but essential to modern campaigns. The disparate treatment resulting from Senator Suliga's replacement on the ballot, combined with his successor's funding advantage, during the critical few weeks until Election Day essentially eliminated Mayor Marks' chances of electoral success on November 4, 2003. The Petitioner respectfully submits that such a result is unconstitutionally impermissible. *Timmons v. Twin Cities Area New Party,* 520 U.S. 351, 358 (1997).

Finally in this regard, Mayor Marks respectfully submits that if candidates such as he do not receive this honorable court's protection, they will continue to be treated disparately under the

lower courts' application of the *Samson* rule, which denies them protection to exercise the fundamental right under the United States constitution to seek public office. The Petitioner also respectfully contends that protecting his right to seek office outweighs other, competing interests under the appropriate constitutional balancing tests.

If "late replacement" is denied, voters will be able to exercise their right to vote for duly nominated candidates like Senator Suliga, whose name in such event would have remained on the ballot. Should a would-be "late withdrawal" candidate like Senator Suliga be reelected but decline to serve, under existing New Jersey law, the party County Committee(s) would be free to select a replacement and, in the Petitioner's circumstances, very likely would have done so. That replacement candidate would serve until a special election could be held at the next general election, pursuant to N.J.S.A. 19:27-11, which the Petitioner submits is a fair result. That outcome would provide both the Republican Party and the Democratic Party even competition, equal footing, and equivalent fundraising opportunities while giving voters a true choice.

In contrast, the alternative construction and application of the Vacancy Statute is grossly unequal, favoring only the "replacement candidate". Mayor Marks respectfully contends that the lower courts' reading of that legislative enactment, pursuant to the *Samson* scheme, is inequitable to the point of unconstitutionality.

Conclusion

For the foregoing reasons, the Petitioner respectfully requests that his petition for a writ of certiorari should be granted, notwithstanding the election of the "replacement candidate" on November 4, 2003 to the office of state senator in the 22nd Legislative District of New Jersey, pursuant to the lower court orders from which the Petitioner seeks relief.

Respectfully submitted,

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Transcript of Trial Court Proceedings

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : UNION COUNTY
DOCKET NO. UNN-L-3544-03
A.D. Docket No. _____

THE UNION COUNTY DEMOCRATIC COMMITTEE, et als,	:	
Plaintiffs,	:	
v.	:	Transcript of Hearing
HON. JOANNE RAJOPPI, Clerk, County of Union, et als, Defendants.	:	

PLACE: Union County Courthouse
2 Broad Street
Elizabeth, New Jersey, 07207

DATE: Friday, October 3, 2003

BEFORE:
HONORABLE EDWARD W. BEGLIN, JR., A.J.S.C.

TRANSCRIPT ORDERED BY:
PHILIP J. MORIN, III, (LeBoeuf, Lamb, Green & MacRae)

FREDERICK D. WOLFF, III, C.S.R.
Official Court Reporter
Union County Courthouse
2 Broad Street
Elizabeth, N.J., 07207

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-and-
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Attorneys for Martin Marks, Republican Candidate

Friday, October 3, 2003

THE COURT: This morning is the return date of the order to show cause entered by this court on September 29th. If we're ready to proceed, Mr. Genova, I'd be pleased the hear you.

MR. GENOVA: Good morning your Honor. Thank you.

Your Honor, this is an application for injunctive relief directing the Union County Clerk, Middlesex County Clerk and Somerset County Clerk to allow for the substitution of a candidate for state senate on the Democratic line who has withdrawn from the race.

It also implicates the equitable jurisdiction of this court to the extent the court may enter an order allowing for that replacement and printing of a new ballot containing the new candidate's name.

Senator Suliga withdrew from this race,

withdrew from this race for reasons that have been articulated in published reports and in doing so, withdrew his candidacy. That provoked a vacancy that each of the three democratic county committees seek to fill under N.J.S.A. 19:13-20.

The central issue in the case is whether or not they are able to do so after the 51st day which is

contained in that statute; should fail by virtue of the time limitation contained in that statute. We believe that the question of the construction of that statute has been addressed in a dispositive matter by the New Jersey Supreme Court in the case of NewJersey Democratic Party v. Samson, wherein the court articulated a standard grounded upon the traditional approach of our courts in this jurisdiction to afford a liberal construction to our election laws to effect their underlying intent and purpose and the test that was adopted by the Supreme Court is not an arithmetical numerical test but nonetheless still a test that we would seek to have this court find in the circumstances and that is a test borne out of a balance, a balance between what the court construed to be a paramount interest, public interest grounded in our elections law and that is that voters be afforded a choice on election day and balance that against the question and

appropriate consideration as to whether or not a change would disrupt the orderly machinery of the election process.

In making that assessment, the court, I believe, invited inquiry by subsequent jurists to evaluate whether or not it is administratively feasible to effect the change. So for those that would argue

that it is an abandonment of some standard, I would think not. I think the Supreme Court gave us a workable standard and one that is very consistent with elections law jurisprudence in our state.

So, the question, I think, for your Honor is this: I think it is very clear on the first element of voter choice, if my clients were to be deprived of the opportunity to fill the vacancy, and I might point out that the right to fill the vacancy the Supreme Court found to be a right the parties possess that voters would be deprived of a choice in an even greater sense than the facts that existed under the Samson case to the extent there's only one other candidate on the ballot, in this case Mr. Marks.

Clearly the absence of a candidate who is qualified to serve ultimately having been a candidate in the race would be lost, so voters clearly would not have a choice.

I think the central issue for your Honor is:
Is it administratively feasible under the facts of this case? And I'd suggest to your Honor that it is for reasons that are even more compelling than those existing in the case that was before Supreme Court in Samson.
Your Honor invited the county clerks in our

conference yesterday to provide you with what I think is important information and I think we need to address that as well as what I'm about to say.

It's clear that the bulk of this district, the 22nd Legislative District, is comprised of Union County. The Union County Clerk has yet to even print the ballots that would contain the name in place of the candidate, so there's no prejudice to the County Clerk's Office therefor. Is there a cost factor? And I'd assume that the County Clerk upon the order of this court is in a position to move swiftly to print the ballots and get them out.

The representation to me from Middlesex is that ballots have been printed but not distributed and in Somerset which contains only two towns, like Middlesex, in the 22nd Legislative District, the ballots have not even been printed there.

Arguments were raised at the initial order to

show cause application going to whether or not an order by this court allowing for the substitution would compromise those who are the beneficiaries of the rights under absentee ballot law and military, overseas military absentee ballot law and I think what we find, which is significantly less comparison than that existed in the case before the Supreme Court last year,

is the fact that in the aggregate there have been a total of two requests for absentee ballots by way of military and overseas applications. Now that's not to diminish those two individuals and their right to vote. It goes to the issue of whether it is administratively feasible to identify those two applicants, insure an appropriate ballot and in the case of Union County no military ballots were issued. In the case of Middlesex County that one military ballot had been sent, and in the case of Somerset county -- excuse me -- in the case of Somerset County that no military ballots, in the case of Middlesex county there is just one request and that hasn't been sent and in the case of Union County, there's one military service ballot request and that has not been sent. So there is no consequence in that regard.

Your Honor, if I might forecast what I anticipate to be the principal argument, not addressed

specifically by the Supreme Court, that has been raised in this case is the equal protection claims that have been asserted by the defendant, Mr. Marks. Before I do that, I'd like to conclude by saying that I believe the facts of this case make it eminently clear that it is administratively feasible to accomplish the paramount interest, and I think your Honor yourself have foretold

the type of construction that should be afforded N.J.S.A. 9:13-20 in an unreported case that appeared before your Honor actually a year or two before the Supreme Court's decision, a case I only learned of yesterday, and that case is unreported. It's in the matter of In Re Petition of L. R. Darden and your Honor entertained an application by a local council person in Roselle Park seeking to have his name removed from the ballot after the 48th day, having withdrawn for familial and employment related reasons and your Honor in that case, prior to the New Jersey Supreme Court's decision, allowed for a substitute candidate, as I understand it, to be on the ballot, during a period of time that was after the 48th day in connection with the municipal primary election and having not had the benefit of the transcript of that case but just your order, I can't speculate as to your rationale, but to the extent that the conclusion reflects an

appropriately liberal construction of those time constraints I would ask your Honor to reach the same result here.

With respect to the equal protection argument --

THE COURT: My only regret is it wasn't published so you could tell the Supreme Court that the

precedent had already been set.

Thank you for reminding me of that. Frankly, I forgot it.

MR. GENOVA: Your Honor, that's one of the unfortunate circumstances of this practice, election practice is that it comes in the context of such a compressed time-frame that, unfortunately, many decisions don't find their way to be published.

THE COURT: Just to digress, I remember telling Chief Justice Wilentz once that the court should publish its reasons for its actions in election matters, just for that reason, that the municipal and county clerks need that type of guidance from the courts and because, as you say, the matters come so quickly and are handled as they must be in an expeditious fashion, many times they don't end up in the books.

MR. GENOVA: Right. Despite -- this is not,

although it is not in my pecuniary interest, would allow for my colleagues at the Bar to come to learn as much as I have come to learn and expand the practice. Your Honor, on the question of the equal protection clause, I think that we learned about that argument in the brief filed at the end of the day yesterday. I haven't had the benefit to brief it. We

have done some research and I think a case that is quite compelling on that issue is an Appellate Division case in the matter of Schundler v. Paulson which was a case considered by the Appellate Division in May of 2001, wherein the central issue was whether or not Mr. Schundler, who was incumbent, excuse me was the nominated candidate by the Republican Party for governor was deprived of his rights under the protection laws by virtue of a change in legislation that delayed the filing deadlines for candidates in primary elections, allowed for a substituted candidate to be substituted and whether or not that substitution resulted in a deprivation of equal protection as it related to our campaign finance law, particularly gubernatorial finance law.

As I understand the argument being asserted here by the defendants, it is that somehow and I think their argument is speculative because there are no

facts to support it other than speculation of a political consultant, is somehow the substituted candidate, in this case Mr. Scutari, that he will have an additional benefit under the operation of our finance laws, consequently Mr. Marks will be deprived of equal protection.

For several reasons I believe your Honor

should reject that argument. The first reason is I think the applicable legal standard is not a strict scrutiny test as suggested by the defendants here, but rather the test that should be employed is a rational basis, and I think that that's a different test. More fundamentally, there's nothing to suggest whether the placement of Mr. Scutari for Mr. Suliga, Mr. Scutari would not be subject to the same campaign finance law Mr. Marks is subject to, same contribution limits, same restriction on donors and the like. To the extent there is a suggestion that political parties will be used as vehicle to allow for contribution of money from Mr. Suliga to this campaign, that's all speculative, number one. Number two, Mr. Suliga's campaign itself is subject to contribution limits which are set out in great detail under our campaign finance law. Particularly, for the benefit of the court, regulation N.J.A.C. 19:25-11.3 and 11.66 and

11.7 set out those standards and those standards set a cap on contribution limit by the committee of $7200. For those that would suggest they wouldn't apply, that's the law as applied to candidates and committees. Lastly, your Honor, in terms of administrative feasibility, in order to insure the orderly administration of this process my clients have

proceeded to select a candidate in the hope that the relief granted by this court, although not authorized to effect that change on the ballot, and appropriate certification, oath of allegiance and the like have been executed by all concerned, county chairman of each of these parties, the State Democratic Party chair, those have been filed with the Division of Elections and the vacancy, in other words has been perfected under 13-20. So we're in a position, should your Honor so decide to grant the relief we request to allow for the clerks of each county to proceed immediately at the close of this hearing to direct their members to print ballots. Thank you.

THE COURT: Let me hear next from the county clerks and then Mr. Chadwell will have the benefit of responding.

Mr. Barry?

MR. BARRY: Judge, just in reference to

information supplied by Mr. Genova, I confirm that. As I stated in our conference call, on the application for the order to show cause, as of that date, the County Clerk had not had the ballots for the 22nd Legislative District printed. In light of your order, obviously, they still have not been printed. From my discussions with Miss Rajoppi, it is certainly administratively

feasible for us to, upon any order entered today, have ballots printed by no later than over the weekend. Her approach to the one military service application would be to forward it by way of -- we believe, we're not sure at this point whether it is an overseas application or not. If it is, we would use what's called Global Express to get that to that individual. For out of the state civilian absentee ballots that have to be sent out, we would be using Federal Express, then the normal mailing process for those within the state. So we would certainly anticipate being in a position to have, at the very least, absentee ballots out on Monday for those individuals -- Monday? I'm sorry, it will be some time next week they'll be out.

THE COURT: Union County is the dominant county in the 22nd District. If I hear you correctly, the clerk is not raising any other problems, administrative problems as a result of this delay?

MR. BARRY: That is correct.

THE COURT: Is Federal Express normally used for out of state military ballots?

MR. BARRY: I don't believe so.

MS. RAJOPPI: It was used last year.

THE COURT: Thank you.

Mr. Aronowitz?

MR. ARONOWITZ: Your Honor, Middlesex is in a somewhat, slightly different position. We've already printed our ballots, so we don't take any position as to one way or the other on the merits, but there will be some additional cost incurred to us to have our printer go back and reprint the 22nd District. We would ask if your Honor grants plaintiff's motion that you consider having plaintiffs pay whatever additional costs are incurred by Middlesex. I think it has been estimated somewhere between $500 and $600 to get the 22nd Legislative District ballots reprinted. With one military ballot we have I believe I was informed this morning is in the Washington, D.C. area, so it is, it is not that big a deal for that individual.

THE COURT: Thank you.

Now Mr. Rodgers.

MR. RODGERS: Good morning, your Honor. I have been advised there's 41 applications for absentee

ballots, all from civilians. Also been advised that ballots are being printed currently for districts other than the 22nd and that as long as we receive a disposition by your Honor no later than early next week, that it's not going to cause us any administrative difficulties. Thank you.

THE COURT: Thank you.

Mr. Chadwell?

MR. CHADWELL: Thank you, your Honor.

May it please the Court, my client, Candidate Martin Marks, is concerned about more than the administrative issues that have been voiced by Mr. Genova and fundamentally paramount is my client's perspective and the perspective of the voters of the State of New Jersey is the question of what the facts are in this case.

Mr. Genova has asserted the relief sought in the verified complaint should be granted in the hearing and the facts are very clear.

Your Honor, I believe, has a brief submitted by my colleague, Peter Sheridan, on behalf of -- and on which Mr. Morin appeared on the brief, and there are some arguments that are certainly legal arguments, some of which Mr. Genova touched upon, but the anterior question he feels is what justifies the operation of

the vacancy filing portion of the statute here? There are certifications and other papers submitted. Some of the allegations on information and belief in the plaintiff's papers, but the court has not had the benefit on this hearing on order to show cause of any specification of exigent circumstances or details other than the withdrawing candidate's, copy of the

withdrawing candidate's letter, and we're submitting, respectfully, that the basis for the withdrawal which has triggered the need to fill the vacancy and brought the question before the court is one on which there isn't much of a record. There isn't any record. And I'm suggesting that the court needs a record to base any findings it issues today on the order to show cause.

THE COURT: Do you find that in the Supreme Court's decision of last year that it would be appropriate for a court to make that factual --

MR. CHADWELL: The Supreme Court wasn't entirely clear on the question of cause and this is a point touched upon in the brief submitted on behalf of my client.

My position is that there needs to be a showing of cause and to cut to the chase the meaning of the phrase "vacancy howsoever caused" is what puts us

into the position of having governmental representatives, county clerks and others, in the administrative process here today is that the meaning of that phrase within the statute is critical as far as filling the vacancy is concerned. So cause --

THE COURT: Is the meaning not plain on its face, "howsoever caused"?

MR. CHADWELL: Your Honor, if a candidate --
THE COURT: I'm thinking of the footnote that dealt with the language in the statutes of other states which admittedly is much more precise -- death, disability, causes articulated. Our legislature has chosen instead to use the words "howsoever caused."
MR. CHADWELL: And again, your Honor, I'm not so much focusing on the fact of a withdrawal here as justification for filling the vacancy in this manner and if there were facts before the court that could show -- I mean, there may be sufficient facts that could show that these circumstances upon which the candidate's withdrawal was based are exigent circumstances, they have gelled lately. You know, we have in this particular circumstance a candidate who has withdrawn from the race, and it is quite clear that from the reports in the media and otherwise that his polling numbers have dropped and --

THE COURT: How about, "My wife told me if I continue to run for this office, she's out of here, and I therefore submit this letter withdrawing my candidacy?" Albeit not within the 51 day period. Would it be appropriate for a court to evaluate that justification, that reason rather than accept the letter on its face?

MR. CHADWELL: I believe it would because the court should inquire into the circumstances surrounding the withdrawal.

THE COURT: Consequences to that candidate's marriage?

MR. CHADWELL: Well, the court can either accept or reject the basis on which the candidate's withdrawal was premised, but if we're talking about a last minute switch, as it's termed in the brief and I respectfully submit that should be of equal concern to the court in terms of voter choice and the other criteria the Supreme Court of New Jersey was interested in, if the candidate, withdrawing candidate had taken a leave of absence from his senate seat or had done something with respect to his employment as chief financial officer of the City of Linden, if those kinds of circumstances were present in what we're hearing is his basis for withdrawal, not a polling issue, but

other matters, then I think that would be highly germane to the court, and I respectfully submit that without any factual basis we can't know for sure. The court can't have a sound basis on which to decide whether the ultimatum issued by the candidate's wife or other issues such as has been cited in this case, other than polling, are the ones on which an appropriate

vacancy filling --

THE COURT: My question really was if the legislature chooses to use the phrase "howsoever caused" and if the reason, the justification as you call it for the withdrawal is to become relevant, isn't it for the Legislature to define and specify that as opposed to a court when faced with the howsoever clause?

MR. CHADWELL: It would be indeed much more convenient for the Legislature to address all of these issues, but given what is before the court today and given what the Supreme Court said in Democratic State Committee v. Samson and my suggestion, your Honor, that there is a need to show cause to get the facts out.

THE COURT: You say given what the Supreme Court said. I don't find a hint in the Supreme Court decision of that type of inquiry. Do you?

MR. CHADWELL: Well, if it isn't there it

should be, but I see it there.

THE COURT: I'm a trial court, is it --

MR. CHADWELL: We could talk about penumbras and so on, but I think what the Supreme Court's decision is suggesting is that given what the Legislature has left us with -- at this point I believe there is a bill introduced by Senator Littel and

another co-sponsor that would address partially these kinds of situations and I don't have, given the exigencies of an election case, I don't have either a reported case that Mr. Genova has cited or the citation of that piece of legislation in the assembly and state senate. But it is clear the Legislature should address these kinds of problems and since the Legislature has not done, so I think it falls upon this court to use its best wisdom to evaluate the application on order to show cause and rather than simply grant the relief requested in the verified complaint, I'm respectfully submitting that this court, suggesting this court has an obligation to look into the facts upon which the withdrawal is premised and ferret out the truth and the reason for that is, and your Honor will note the things submitted in our brief, the brief on behalf of Candidate Marks, that there should be concerns why a court is not a legislature but when the Legislature

said what it has and left us in this position, such concern by this court and other courts about last minute switches and the basis for those vacancy fillings. You know, there's one practical aspect and it has been briefed. The fall out of not only this case, a year or so later, talking about the last election, senatorial election in which this was a major

headline. If what we have today is not remedied by the legislation or yet to be remedied by legislation and we've got a situation in which other cases such as this one before your Honor pop up in other counties when the candidate's polling falls off, then I respectfully submit that the court has an obligation to assess the application for vacancy on the basis of questions such as what was the candidate's wife's ultimatum? Was it something else such as what we're hearing in this case? But without having that, I think it's relevant and I think the court should have the benefit of those facts in important public questions such as this election which affects the senate candidate in Union and two other counties.

Now, there are other issues that Mr. Genova again has touched upon with respect to equal protection. We can talk about those, unless the court would like me to respond further on any of those. I

want to reiterate in the sense Candidate Marks is in a position, it's not simply a question of what happened to the withdrawing candidate. Candidate Marks is in a position, having signed a statement that he would stand, he would stand for election and fill that office if appointed and now at this point in the campaign having gone as far as we have, having the primary

process ferret out truth, just as this court, we're submitting, should be ferreting out truth about the fundamental basis of the application before your Honor today, that cauldron of the primary process as a fact finding process and that's what is good about our elections law and what is good about America. We have the ability to get to those truths, and for a candidate simply to abandon the process when the polling results are not so good is problematic. It's problematic because we have this case here today and very likely the process will be repeated and I'm just suggesting the courts ought to be very careful about how they allow the vacancy filling statute to operate and I'm also suggesting that in the event we don't have a record, we don't have an adequate record on appeal whichever way your Honor should decide today, it may be Mr. Genova who would want to appeal the decision, it might be Candidate Marks. If there isn't

any record, the questions that I think are implicit in some of the precedents that stand as the court is now looking are ones that are going to prove equally troublesome not only a year from now, but in the coming, you know, every election cycle we have this repetitive process. The confusion will, wouldn't be simply administrative confusion -- I want to get away

from that notion -- it will be chaos in terms of who is running for office, positions that a candidate takes, positions the candidates opponent takes in our two party system and the process really does get unraveled when you have last minute switches and a candidate who is not tested by primaries can be tested in the 51 days, so the legislature says of elective dialectics as it were, it's a real danger. So I'm going to have to proceed at this point.

THE COURT: I appreciate the Supreme Court brought up the Toricelli case so quickly from Middlesex County last year, there was no ability to develop a factual record, but is it significant that the court didn't even, in a footnote, speak to the absence of that record, and give a hint to a trial court in a future case that this type of inquiry would be appropriate. Isn't the silence and absence of any indication that that is a relevant factor significant

to me?

MR. CHADWELL: I don't believe so, your Honor. I think your Honor has to be guided by principles even Mr. Genova mentioned and those are the ones that the Supreme Court looked at without much of a record on which to base other findings. It was concerned about fairness. It was concerned about voter

choice, and it did get involved in a legislative arena.
The Legislature --
THE COURT: If it is appropriate, why am I then reminded of Justice Frankfurters reference to the thicket and the inappropriateness of the courts getting involved in a political thicket.
MR. CHADWELL: Your Honor didn't start this. The problem comes because we have a statute to which an exception is now being sought. Now, the basis for that exception was played out in headlines in the last United States Senate campaign. I believe there is some distinction between that statewide office and the current contest not only in terms of dollars, not only in terms of the geography covered in the demographics in question, but there are some campaign finance law questions.
I think the Fourteenth Amendment argument and questions should the strict scrutiny test be applied or

rational relation sufficient for the purposes of assessing Candidate Marks' assertion that we're going to have double dipping problems and money transfer problems. Those are important, sensitive issues, but the court, the guidance that your Honor is left with by the New Jersey Supreme Court focuses on fairness and when the court decided to use equitable principles to

evaluate the legislative process and modify a date that it had decided, whether it was material, just as this court has to again decide whether the deadline established by the Legislature is material or whether that should be waived or there should be an exception, each case stands on its own merits. Each case has more facts available to the reviewing court or the trial court, the better able the court is to assess these crucial issues of fairness and whether the sort of equitable intervention that is being sought today without more of a record is appropriate. And we're saying, I think, your Honor that when you have circumstances, they're never practical problems with last minute switch candidates. When you have circumstances such as those before the court today it's critically important for the court to evaluate what is true and what is an allegation and without the words that's before the court today in terms of the basis for

vacancy filling and basis for a candidates departure from the race, I don't think the court should take particular comfort in rendering a decision and certainly to do so at the close of this hearing today we're submitting would be premature.

THE COURT: You want to be heard further on the equal protection argument?

MR. CHADWELL: If your Honor -- I know the briefs came in late yesterday.

THE COURT: My concern is whether or not it it is premature.

MR. CHADWELL: I'd like to get to, well if your Honor of -- let me understand, your Honor is saying that just analyzing the 14th Amendment issue is premature?

THE COURT: Has Mr. Marks as of this moment been harmed?

MR. CHADWELL: As of this moment, with uncertainty of the election I think he and the electorate has been harmed. Now, has he been harmed in terms of campaign finance disparities?

THE COURT: In terms of his Constitutional right of equal protection.

MR. CHADWELL: Which is invoked by the transfer of some $189,000 from the former candidate's,

withdrawing candidate's --

THE COURT: Has that occurred?

MR. CHADWELL: He's in jeopardy if the court -- all depends how the court decides the application. If the court grants the relief sought in the verified complaint, elections law mechanics, election law statute, allows the vacancy to be filled,

in a way other than as the Legislature has set out in a time shorter than that provided by the Legislature, that will immediately trigger the problems and concerns. Those will then be problems for Candidate Marks because of financing, what's been termed in our brief double dipping, as well as transfer. I can talk about those if the court is interested at this point in those questions. We think there are good arguments, but again, the argument that I think this court has to address, must address first in order to be fair to not only my client and his supporters, but also all voters in this district is whether there's going to be kind of dialectic debates and the exchange one sees in the courtroom, in a high school debate, in the political process as it stood when the founding fathers hashed out things, when the country was first born and as goes on every November and before that every June. That's a very healthy process.

What we have here is an aberration and the danger is that in attempting to be fair to voters and give voters a choice when an vacancy could not be filled following the withdrawal, howsoever caused, within a relatively short period before the election, what then must courts do? I think this court, respectfully think this court needs to take account of

the basis for the application for relief that has been granted. It has a verified complaint that sets forth prayers for injunctive relief and would very suddenly nullify the world in which we live before the withdrawal, which will become a changed world due to this candidate's withdrawal and I think the reasons behind the withdrawal are at least as important to the court as what the Supreme Court has said very explicitly does exist and said explicitly in the context of giving judges like your Honor guidance on how relief should be granted when an application such as the current one is made in the future, and we would submit that there are going to be more such applications due to the fact that this thicket is one into which the courts have been thrust, into which the courts have, at least our Supreme Court and your Honor before the Supreme Court of New Jersey in an unreported case Mr. Genova referred to, courts have this

responsibility.

The courts, what we could do to prevent this from being argued in the courtroom and having last minute switches, decided we should do, certainly the Legislature would welcome, Candidate Marks would welcome that, but absent such legislation, and some way to not only rationalize the process to the county

clerks and provide order and notice and hearing and due process, absent more information on which to proceed based on statutes, I respectfully submit today that this court needs to take account of what the facts are in assessing any exigencies that may have existed outside the deadline and within the deadline and I'm also suggesting that there is a separation of powers issue lurking here as well because when the court does get into the thicket, it has to be mighty careful about the ramifications of deciding these questions that are resolved by statutes and the statute says you either fit or don't fit in terms of vacancies.

In this case because the statutory time limit has not been met. There is a suggestion there's ample basis for the court to act for fairness to exercise equitable power to jump into the thicket and give the voters a choice, and the Supreme Court has said on that point we have this case, we may have many more cases

and my client, candidate, Republican Candidate for Senate in the 22nd Legislative District is, once this court says, once that court to be particularly mindful of the basis on which the Legislature's rules are flexed, and if the court is faced with a question whether the deadline is material or not, then it needs to have such factual information at hand on which to

make findings about any number of facts other than those that are addressed in the certification before your Honor at this point. Thank you.

THE COURT: Mr. Morin do you wish to be heard?

MR. MORIN: No, your Honor, just answer specific questions about the brief.

THE COURT: Mr. Matsikoudis?

MR. MATSIKOUDIS: Attorney General and Division of Elections does not oppose, simply submits the legal principles governing this matter are clearly set forth by the Supreme Court in New Jersey State Democratic Committee v. Samson case which is that a political party may substitute a candidate if it's administratively feasible to do so for whatever cause. With regard to that factual question whether or not it is administratively feasible, we defer to the county clerks.

MR. GENOVA: Your Honor, just briefly. I think the Supreme Court was not silent on the question, although not part of its holding, I think the Supreme Court was confronted in argument about the question of whether the language "howsoever caused" had content and calling your Honor's attention to page ten of the decision, it is strictly similar to that advanced by

Mr. Chadwell here this morning. Reading from it, defendant's brief that the interpretation of N.J.S.A. 19:13-20, we have adopted will cause electoral chaos because any candidate who fears losing at the poles can withdraw thereby allowing someone else to run instead. But candidates who chose to withdraw are free under the present scheme to do so for any reason, thus entitling the political party to replace them on the ballot with immunity up to 48 days before the election. We assume that it is difficult for any party logistically, politically and financially to replace a candidate closer to an election. That is not to suggest it cannot happen. It has in this case. However defendants have not presented any evidence indicating that a rush of withdrawals has occurred in the state that allows substitution close to the election, most important if the Legislature credits defendants, all it need do as we noted earlier is amend the statute to

expressly preclude or otherwise condition ballot substitution after the 48th day. In a footnote your Honor refers to they give further content to the concept by saying in reference to the contentions of the defendant "this disagreement with plaintiff is not whether the statute permits a new candidate to enter the field within the 48 day period before election but

under what circumstances the candidate is permitted to do so. Unlike statutes in other jurisdictions our statute does not distinguish acceptable reasons or unacceptable reasons for withdrawal as is the case in some other states, the point being, your Honor, that to the extent that Mr. Chadwell would argue that there is the absence of a record, there's clearly a record on the elements required for summary disposition of this matter.

The legal elements require a prima facie case, if you will, that need be established under the legal standard adopted by the court in its interpretation of 13-20 which is has there been a vacancy, has it been perfected and has there been a substitution adopted by the political party? And I'd suspect that the last element, is it administratively feasible to accomplish that change. Those are clearly in the verified complaint. There are no material facts

in dispute. If there were material facts in dispute then I'd suspect that we would have gotten a certification to the effect that any of those material facts were in dispute, your Honor has a record of undisputed material facts and it now becomes a question of law.

Your Honor, I'd agree with you that in

reference to Justice Frankfurter's suggestion about venturing into political questions, but I think an invitation is made by an inquiry into the concept of howsoever caused goes beyond just venturing into the thicket, it goes to the court's intervention into a political question. Our court has indicated at least in dicta, that the rationale or reason for the decision that a candidate might make to provoke a vacancy is not legally relevant what I find somewhat duplicitous in the argument advanced by Mr. Steele on behalf of his client is that, or Mr. Chadwell that is, is that on the one hand we have the plain meaning of howsoever caused, which he would want to abandon, he would want to argue that howsoever caused language should be not be liberally construed in the manner we're advancing, at the same time he would want strict construction of the time tables. I don't know that you can reconcile those two.

For those reasons, your Honor, I think there is a record that you can render a decision as a matter of law and grant the relief being sought here.

THE COURT: Thank you.

As I indicated, today is the return date of the order to show cause entered on Monday of this week. I find that the matter can be resolved today in this fashion. As it qualifies for summary treatment, there are no material fact issues that would preclude that or warrant a plenary hearing.

A vacancy exists as to the Democratic Party's candidate for State Senator in the 22nd Legislative District in the November 4, 2003, general election. That vacancy was created on Friday, September 26, 2003, when Joseph S. Suliga withdrew as such candidate, having heretofore been nominated as a candidate at the June 20, 2003, primary election.

The provisions of Title 19:13-20 are therefore triggered, that section of the elections law which sets forth the procedure for filling a vacancy such as this, to use the language of that statute

"howsoever caused." I would note at this point that I do not find within that language nor in the Supreme Court decision to which I will refer shortly any basis for a court to make inquiry as to the cause of the vacancy, much less that the candidate withdrawing or his advocates justify the withdrawal and creation of the vacancy. "Howsoever caused" has a plain meaning.

It is clear that there is no inquiry to be made as to what caused the vacancy, much less a demonstration that it was justifiable.

Section 20 addresses vacancies occurring not later than the 51st day before the general election which this year would be September 15th. Section 20 is silent as to vacancies occurring after that date, but last year the New Jersey Supreme Court dealt with that issue in New Jersey Democratic Party v. Samson reported at 175 N.J. 172 and 178. There the Supreme Court permitted the Democratic State Committee to fill a vacancy created by the party's United States Senate candidate's withdrawal 34 days before the general election finding that Section 20's usage of the 51 day criteria did not preclude a party from filling a vacancy occurring thereafter and allowed the party to make its selection of the candidate to fill the vacancy later than the 48th day preceding the general election.

It is Subsection d of Section 20 that provides that 48 day benchmark.

Here, as in that case, we're confronted with a vacancy occurring outside the statutory window, and the party's ability to select a replacement candidate, that is, when the vacancy and selection of the replacement occur between the 48th day and the general

election.

The Supreme Court last year said, "We do not believe our Legislature intended to limit the voters' choices in a case where there is sufficient time to place a new candidate on the ballot and conduct the election in an orderly manner."

That sentence says an awful lot. It highlights the public purpose behind all election regulation -- voter choice -- and that that choice in whatever context issues may arise is the dominant interest and is not to be impeded or adversely affected, if possible. And the second factor is sufficient time to place a new candidate on the ballot and then conduct the election in an orderly manner. That factor is a typical factor that a court can deal with. It is not unlike reasonableness, arbitrariness, capriciousness that is the standard factor or test when a court reviews actions taken by

any other governmental body. In other words, is it unreasonable by placing the candidate on the ballot at this time to proceed with conducting the election? Would the process be adversely affected thereby? Let me go through Section 20a.

Subsection A sets forth the procedure in this instance to be followed by county committees when

selecting a candidate to fill a vacancy. Under section 20b the chairs of the county committees involved are allowed up to seven days to give notice of a meeting to select a replacement, which meeting is to be held at least one day following the date on which notice was given. That then is a permissible eight day period. Here notice was given and a meeting was held on October 1st, reducing that period to five days, although as noted beyond the 48 day period that Section 20d dictates. Subsection d(3) also requires the statement of selection of candidate to be certified jointly by the chairs of the respective county committees to the State Democratic Party chair who then certifies the same to the New Jersey Division of Elections.

There's no question that that has been done here. That statement must set forth the qualifications of the candidate who has been selected, as to residency

and party membership, and include the candidate's consent to stand as a candidate along with the oath of allegiance. There also is no question that that has been done in this case.

The preliminary requirements having been satisfied, we then move to the more significant issues as identified by the Supreme Court. County Clerks are

directed by the elections law to have the ballot ready for the printer on or before the 43rd day prior to the date of the election, which this year would be September 22nd. In this case the Union County Clerk appears to have delivered the ballots for the 22nd Legislative District to the printer, but upon learning of Senator Suliga's withdrawal on September 26th, directed the printer not to proceed with the printing of ballots for the 22nd District until the court had an opportunity to address whatever application would come before it. Certainly a reasonable decision. The Somerset County Clerk has not yet completed ballots for the printer, while Middlesex's County Clerk has received the ballots back from the printer.

Once ballots are printed, the next statutory time-frame is that dealing with civilian and military service absentee ballots. Title 19:57-11 directs county clerks to forward them to the applicants "as

soon as practicable" after the 40th day preceding the general election, which this year would be September 25th. The three county clerks involved in this matter have advised the court that as of the close of business yesterday, Union County has received 339 applications for civilian ballots and one application for a military service ballot from voters within the 22nd Legislative

District; and Somerset County has received 41 civilian ballot applications and no military service ballot applications; while Middlesex County has received 24 applications for civilian ballots and one application for a military service ballot. Middlesex further advises that no ballots have been mailed to any of these applicants and that any change in the ballot at this time could be effected within 24 hours, with the absentee ballots then being mailed within 24 hours thereafter.

The question then becomes is there sufficient time to place the new candidate on the ballot and conduct the election in an orderly manner. This question, as we know, must be asked within the context of providing voters the opportunity of exercising a fundamental right of franchise to vote freely for the candidate of one's choice and the limitation on that opportunity is a limitation on the franchise itself.

Clearly, election officials need sufficient time to attend to the various mechanics of preparing for the general election. The printing of the ballot is just a first step. Absentee voters, military and civilian, need sufficient time to apply, to receive, to execute and to return their ballots. I find that that will not be adversely affected here. No ballots have

yet been sent. There is no need for correction or replacement of that already received by any voter and there's sufficient time remaining to accomplish receipt, execution and return of all absentee ballots as the statute contemplates. The County Clerks of Union and Somerset have sufficient time to complete printing of the ballots and the Middlesex County Clerk is able to print replacement ballots within 24 hours. That is certainly feasible and not unduly costly but I do grant leave for Middlesex County to request reimbursement for the expenses of reprinting the ballot for the 22nd Legislative District and that expense is to be borne by the plaintiff.

The shrinkage of the 48 day period I find will not adversely affect the ability of these election officials to conduct the election process in an orderly manner. Full voter choice, therefore, dictates the substitution be permitted and the general statutory

intent and underlying purpose of the elections law will be furthered. My conclusion is that the substitution of a candidate roughly one month before election day of this year will not significantly impact upon the voters' ability to learn about the candidates, evaluate them and have sufficient time and opportunity to reach an informed decision and unhurried choice.

We're dealing with a 14 day difference between the statutory 48th day and the October 1st selection of the substitute candidate by members of the Democratic Committee of the 22nd Legislative District. That period has not adversely affected the party's ability to select a replacement candidate, place him on the ballot, nor the ability of the election officials to proceed to conduct the election in an orderly fashion.

Under the analysis and standards that are set forth in the Supreme Court's opinion of last October, I therefore find that the plaintiff is entitled to the relief that has been requested. Nevertheless I'm urged not to grant that relief because in so doing Mr. Marks is urging that his equal protection rights will be violated. I find that argument premature, that as of this moment no such rights have been harmed. It is speculative as to what will happen with any funds that

may have been received by way of contributions to Senator Suliga's campaign then coming within the ability to be utilized by the replacement candidate. Constitutional arguments are not based upon assumptions and speculation. For those reasons that argument is found to be premature today.

I'm satisfied that the relief being requested

is to be granted, the respective three county clerks will be directed to proceed with printing and completion of the ballots for the 22nd District with the name of the substituted candidate thereon. I'm satisfied that can be done promptly and in appropriate fashion and that all other aspects of the electoral process will go forward as contemplated without a problem. These matters can be held within one week and your good work on this case has simply demonstrated that such can be accomplished. I thank you all. Do you have the order Mr. Genova?

MR. GENOVA: Your Honor, actually no, I can submit one within the hour.

THE COURT: Very well.

Fax it to everyone. Gentlemen, I will hold it for two hours upon receipt. If there's objection to form, I will hear that objection within two hours.

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CERTIFICATION

I, Frederick D. Wolff, III, C.S.R., License No. XI00369, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript, to the best of my ability.

/s/ Frederick D. Wolff, III — Oct. 6, 2003

FREDERICK D. WOLFF, III, C.S.R. — Date
Official Court Reporter
Union County Courthouse
Elizabeth, New Jersey

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Supreme Court of New Jersey Order dated October 15, 2003

SUPREME COURT OF NEW JERSEY
M-333 and C-370
September Term 2003

THE UNION COUNTY DEMOCRATIC COMMITTEE, et al.,
Plaintiffs-Respondents,
v.
MARTIN MARKS, REPUBLICAN CANDIDATE FOR NEW JERSEY SENATOR, 22"" LEGISLATIVE DISTRICT,
Defendant-Movant,
and
HON. JOANNE RAJOPPI, et als.,
Defendants.

0RDER

FILED
OCT 15 2003
/s/Steven W. Townsend
CLERK

This matter having been duly presented to the Court on the emergent application of defendant Martin Marks, seeking certain injunctive relief and the summary reversal of the judgment of the Appellate Division;

And defendant having stated his intention to rely on the papers filed in support of his motion for emergent relief as his petition for certification of the judgment of the Appellate Division;

And good cause appearing;

It is ORDERED that the motion for emergent relief (M-333) is denied; and it is further

ORDERED that the petition for certification (C-370) is denied, with costs.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 15th day of October, 2003.

/s/Steven W. Townsend
CLERK OF THE SUPREME COURT

Superior Court of New Jersey, Appellate Division Order dated October 10, 2003

ORDER ON EMERGENT APPLICATION

UNION COUNTY DEMOCRATIC COMMITTEE
v.
MARTIN L. MARKS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-
MOTION NO. —
BEFORE PART. F
JUDGE(S): CONLEY
WECKER

EMERGENT APPLICATION
FILED: 10/8/2003 BY: MARTIN L. MARKS
ANSWERS FILED: 10/10/2003 BY: UNION COUNTY DEMOCRATIC COMM.
10/10/2003 ATTORNEY GEN. OF N.J. & DIRECTOR OF DIV. OF ELECTIONS
10/10/2003 MIDDLESEX CNTY CLERK

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 10TH DAY OF OCTOBER, 2003, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR	GRANTED	DENIED	OTHER
Summary Disposition on Appeal	( )	(X)	( )

We summarily affirm the Law Division order of October 3, 2003 for the reasons clearly set forth in judge Beglin's decision placed on the record on October 3. 2003. See Democratic State Committee v. Samson, 175 N.J. 178 and 175 N.J- 172 (2002).

FOR THE COURT: /s/ BARBARA BYRD WECKER, J.A.D.

Superior Court of New Jersey, Law Division Order
(Original in Letter Form) dated October 8, 2003

SUPERIOR COURT OF NEW JERSEY
CHAMBERS OF
EDWARD W. BEGUN. JR,
ASSIGNMENT JUDGE

COURTHOUSE
ELIZABETH NEW JERSEY 07207
(908) 658-3888

October 8, 2003

Steele R. Chadwell, Esq.
134 Nassau Street
Princeton, Now Jersey 08542
(via fax 609.921-9468)

Angelo J. Genova, Esq.
Genova, Bums & Vernoia
354 Eisenhower Parkway, Suits 2575
Livingston, Now Jersey 07039-1023
(via fax 973-533-1112)

Re: Union County Democratic Committee, et als v.
Joanne Rajoppi et als Docket No. UNN-L-3554-03 P.W.

Dear Counsel:

The Court has received a copy of the Notice of Appeal filed in the Appellate Division yesterday by defendant Marks, and has been requested to stay Its decision of October 3, 2003, pursuant to R. 2:9-5(b), Because of the emergent nature of the application a formal motion for a stay will not be required, but the stay is denied, for the following reasons;

1. Given the decision of the New Jersey Supreme Court in New Jersey Democratic Party v. Samson 175 N.J. 172 & 178 (2002), It was found that the within action did not present a substantial

1. Given the decision of the New Jersey Supreme Court in New Jersey Democratic Party v. Samson 175 N.J. 172 & 178 (2002), It was found that the within action did not present a substantial question Indeed, the facts and circumstances in this matter were not as egregious as In last year's case before the Supreme Court.

2. Since this Court's determination rendered shortly after 10:00 a.m. on Friday, October 3, 2003, the County Clerks of Union, Middlesex and Somerset Counties have proceeded to print the ballots for the 22 nd Legislative District, and I would assume by this time those ballots have been printed and delivered to the County Clerks, Whether or not any have been mailed to applicants for civilian or military service absentee ballots is not known, but such mailings could well be anticipated at any time, and as less then 30 days remain between today end the general election on November 4, 2003, the orderly process of all necessary steps for that election would be unduly harmed were a stay to be granted.

Very truly yours,

/s/ Edward W. Beglin, Jr., J.S.C.

EWBjr:kl

cc: Robert E. Barry, Esq. (via fox 908-2894230)
cc: Scott D. Rodgers, Esq. (via fax 908-722-7737)
cc: Eric M. Aronowitz, Esq. (via fax 732-7464539)
cc: William Matsikoudis, DAG . (via fax 609-633-7434)
cc:: Philip Morin, III, Esq. (via fox 973-846-6626)
cc: Peter G. Sheridan, Esq. (via fax 609-695-0697)

Superior Court of New Jersey, Law Division Order

dated October 3, 2003

GENOVA, BURNS &
Eisenhower Plaza IL Suite
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Livingston, New Jersey
Tel: (973) 533-0777
Fax: (973) 533-1112
Attorneys for Plaintiffs

FILED
OCT 03 2003
EDWARD W. BEGLIN
A.J.S.C.

THE UNION COUNTY DEMOCRATIC COMMITTEE; CHARLOTTE DEFILIPPO, CHAIRPERSON OF THE UNION COUNTY DEMOCRATIC COMMITTEE; THE SOMERSET COUNTY DEMOCRATIC COMMITTEE; ELIA A. PELIOS, CHAIRPERSON OF THE SOMERSET DEMOCRATIC COMMITTEE; THE MIDDLESEX COUNTY DEMOCRATIC COMMITTEE; JOSEPH C. SPICUZZO, CHAIRPERSON OF THE MIDDLESEX COUNTY DEMOCRATIC COMMITTEE; ELIZABETH GENIEVICH; GERALDINE C. FARLEY; AND MAUREEN COXWELL , and JOHN or JANE DOE, Yet To Be Selected DEMOCRATIC PARTY CANDIDATE FOR THE OFFICE OF STATE SENATOR FOR THE 22ND LEGISLATIVE DISTRICT,

Plaintiffs,

-vs-

HON. JOANNE RAJOPPI, CLERK, County of UNION, in Her Official Capacity; HON. ELAINE M. FLYNN, CLERK, COUNTY OF MIDDLESEX, in Her Official Capacity; HON. BRETT A. RADI, CLERK, County of SOMERSET, in His Official Capacity; HON. PETER C. HARVEY, ATTORNEY GENERAL, STATE OF NEW JERSEY, in His Official Capacity; AND HON. RAMON DE LA CRUZ, Director of the New Jersey Division of Elections; in His Official Capacity; and MARTIN L. MARKS, Republican Candidate for New Jersey Senator, 22nd Legislative District,

Defendants,

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION
UNION COUNTY

DOCKET NO.
UNN-L-3544-03

ORDER GRANTING
INJUNCTIVE AND
DECLARATORY
RELIEF

This matter having been opened to the Court on the application of Genova, Burns Vernoia (Angelo J. Genova, Esq. appearing), attorneys for Plaintiffs, the Hon. Charlotte Defilippo Chairperson the Hon. Elia A. Pelios, Chairperson, the Hon. Joseph C. Spicuzzo, Chairperson, Elizabeth Genievich, Geraldine C. Farley. Maureen Coxwell 11, and Jane or John Doe, the yet to be selected W Democratic Party candidate for the office of State Senator for the VA Legislative District in the -e November 4, 7-003 general election, for an Order directing the County Clerks and related elect election officials to replace the name of Hon. Joseph S. Suliga on the ballot with the name of Nicholas F. Scutari as the Democratic Party's candidate for the Office of State Senator of the 22nd Legislative District in the November 4, 2003 general election and Robert Barry, Esq., County Counsel for the County of Union appearing on behalf of Joanne Rajoppi Clerk, County of Union; Thomas F. Kelso, Esq., County Counsel for the County of Middlesex (Eric M. Aronowitz Esq., appearing) on behalf of Elaine M. Flynn, Clerk, County of Middlesex; Thom= C. Miller, Esq., County Co Counsel for the County of Somerset (Scott Rodgers, Esq., appearing), on behalf of Brett A. Radi, Clerk, County of Somerset; William Matsikoudis, Deputy Attorney General, an behalf of Peter or C. Harvey, Attorney General, Scam of New Jersey, and Ramon de la Cruz, Director of the Jersey Division of Elections, and Steele R. Chadwell, Esq., Peter G. Sheridan, Esq. and Philip Morin, Esq. on behalf of Martin Marks, Republican Candidate for the State Senator 22nd Legislative District;

And the Court having considered the Verified Complaint and Exhibits annexed thereto, the briefs submitted by the parties in connection with the application, and the oral arguments of counsel; and good cause having been shown;

IT IS ON this, 3rd day of October 2003

ORDERED and adjudged as follows:

A. The Defendant County clerks, and related election officials, am hereby enjoined from including on the official ballot for the

November 4, 2003 election the name or Hon. Joseph S. Suliga as the Democrat Party candidate for the office of the State Senator for the 22nd Legislative District.

B. Defendant County Clerks and related election officials are hereby directed to replace the name of Hon. Joseph S. Suliga an the ballot with the name of Nicholas P.. Scutari as the Democratic Party's candidate for Me office of State Senator for the 22nd Legislative District in the November 4, 2003 general election,

C. Each and every Defendant County Clerk is hereby directed to substitute the name of Nicholas P. Scutari in lieu of the name of Hon. Joseph S. Suliga on each and every official ballot, whether absentee, military. provisional, emergency. voting machine, ballot card or otherwise to be utilized in the November 4, 2003 general election

D. Each and every Defendant County Clerk is hereby directed to print the official ballot as aforesaid with the name of Nicholas P. Scutari in lieu of that of Han. Joseph S. Suliga as the Democratic Party cm date for State Senator for the 22nd Legislative District.

E. Defendant Ramon de la Cruz is hereby directed to certify to the Defendant County Clerks, for placement on the general election ballot, the name of Nicholas F. Scutari to replace that of Ron. Jose ph S. Suliga for the office of State Senator 22nd Legislative District

F. Plaintiffs directed to my such costs as incurred by the Middlesex County Clerk in connection with the reprinting of ballots with the name of Nicholas P. Scutari as the Democratic Party's candidate for the office of State Senator 22nd Legislative District upon submission of a certification of such costs by Hon. Elaine M. Flynn, Clerk, County of Middlesex.

G. A copy of this duly executed Order shall be served by counsel for the Plaintiffs upon all other counsel of record by telefax the day of receipt of this Order from the Court.

/s/ Honorable Edward W. Beglin, Jr. A.J.S.C.

OPPOSED X
UNOPPOSED

Undated Letter Withdrawing Candidacy of Joseph Suliga

Hon- Joanne Rajoppi
Union County Clerk
Union County Courthouse
2 Broad Street
Elizabeth, NJ 07207

Hon. Elaine M. Flynn
Middlesex County Clerk
235 Ticetown Rd
Old Bridge, NJ 08857

Hon. Charlotte DeFilippo
Chairman
Union County Committee
65 King Street
Hillside, NJ 07205

Hon. Brett A. Radi
Somerset County Clerk
PO Box 3000
Somerville, NJ 08876

Dear Gentlepersons:

After being evaluated by the High Focus Center, I have decided to enter into an intensive alcohol treatment program. Therefore, I have decided I will not seek re-election as Senator of the 22nd Legislative District.

I entered public service 25 years ago because I care about the people of this state and the issues that touch their lives. I have taken great pride in representing the needs and interests of the people who put their faith in me. This is the right decision for me and the people I represent.

Sincerely,
/s/ Joseph Suliga
State Senator (D-22)

Atlantic City "Press" Newspaper Article
published September 25, 2003

State Sen. Suliga accused of harassing woman at Trump Marina
From Press staff and wire reports

ATLANTIC CITY - A state lawmaker was charged with harassment after he argued with a woman at a casino this weekend and then fought with security guards who came to investigate her complaint, police said.

Sen. Joseph Suliga, D-Union, also was charged with disorderly conduct after his encounter early Saturday with an unidentified West Caldwell woman at Trump Marina Hotel Casino. Both charges are disorderly persons offenses.

Suliga, 45, a first-term senator who is up for re-election this fall, would not comment on the case. His attorney, Edward Kologi, said his client was at the casino with some friends and that the harassment charge resulted from a "misunderstanding." He said Suliga meant no harm to the woman, who told security guards that Suliga made an offensive remark.

According to a complaint filed with Municipal Court, Suliga is accused of using "offensively coarse language" and making sexually explicit suggestions to the woman.

The guards then approached Suliga, who resisted and pushed them, said Lt. Al Della Fave, a State Police spokesman. The guards detained Suliga and summoned State Police detectives from the Casino Investigation Unit, who led the legislator off the floor in handcuffs and filed complaints on behalf of the woman and the security guards.

Suliga then was allowed to leave, but he will have to appear in Atlantic City Municipal Court for an Oct. 3 arraignment.

Kologi said Suliga acknowledged an encounter with a woman around 2:30 a.m., but he "may have" thought she was someone else. Kologi also disputed the State Police's version of what occurred: "(The comment) was intended in a lighthearted type of way, and Sen. Suliga sincerely regrets if any offense was taken by the other individual."

Before he was elected to the Senate, Suliga served four two-year terms in the Assembly and also served on the Union County Board of Freeholders. He also has held several municipal posts in Linden, where he also operates a business.

Newspaper Article posted on www.PoliticsNJ.com
September 26, 2003

Woman Says She Will Not Drop Charges

(Trenton) - The West Caldwell woman at the center of a scandal involving state Senator Joseph Suliga adamantly says she will not drop the charges against him.

The Union-County Democrat senator is accused of being drunk when he allegedly made lewd and sexually suggestive comments to the unidentified woman on the floor of the Trump Marina Casino early Saturday morning.

Referring to what was said, the woman told Millennium Radio, "Nothing the man can do can make it go away. The things he said to me, you can't even imagine. It was just so disgusting."

The "Star Ledger" reported today that a deal was in the works to have the casino drop all charges. The Senator's attorney has also asked authorities to reach out to the woman involved to ask her to drop her charges as well, but she tells Millennium Radio, "No one has approached me, and I have no idea ... I don't know what they mean by they want to talk to me about dropping the charges. Nothing the man could do could make it go away."

She admits she was scared when she first learned Suliga was a state Senator. Her friends were telling her to drop the charges, but after listening to New Jersey 101.5's Jim Gearhart and hearing support from the public, she decided she would not let Suliga get away with it.

Hearing that the casino may drop it's charges infuriated her, and only seemed to strengthen her resolve, "No one deserves to be spoken to like that. I don't care who he is," she said. Her only fear now, is that Suliga's attorney will try and make her out to be the bad guy. I was there buying a gift certificate for my mom," she said, "now I hear he

(Suliga) mistook me for a 'swinger,' that does not excuse what he said to me. "

Her voice breaking with emotion, the woman could not bring herself to discuss the comments allegedly made by Senator Suliga, "It was so graphic ... and he ... I'm just ... I'm appalled. I am completely appalled."

The text of what Suliga allegedly said has been widely viewed on the Internet, but is so vulgar that it cannot be published or broadcast.

The woman also confirms what Millennium News has reported about the surveillance tape taken by casino security. She says Suliga threw "several punches" at casino guards and it took "five or six" men to subdue him.

A law enforcement source that has viewed the tapes tells Millennium News the scuffle can be seen from several different camera angles.

Philadelphia "Inquirer" Newspaper Article
published September 27, 2003

Senator Facing Harassment Charge Ends Reelection Bid

Joseph Suliga (D., Union), accused after a run-in with a woman at an Atlantic City casino, also said he will be treated for "an alcohol-related problem." By John P. McAlpin, Associated Press

TRENTON -A state lawmaker charged with harassing a woman at an Atlantic City casino ended his reelection bid yesterday after issuing a public apology and deciding to seek treatment for "an alcohol-related problem."

In a letter sent to county clerks in his district, Sen. Joseph Suliga (D., Union) said he planned to enter "an intensive alcohol treatment program" and would not be a candidate in the November election.

"This is the right decision for me and the people I represent," Suliga wrote.

Union County Democrats scheduled a meeting for Wednesday to choose a replacement candidate, and officials also prepared to deal with Suliga's possible resignation from the Senate. His term expires in January.

Earlier yesterday, Suliga said he had written a letter of apology to the West Caldwell woman, whom authorities have not identified. Suliga asked his attorney to forward a letter to the woman "when it is legally permissible," the statement said.

"I am profoundly sorry that my remarks were offensive to you, It was never my intent to offend you or to bring you any pain," Suliga said in the letter. "The incident has made you the subject of notoriety and the topic of press reports and inquiries. I apologize for these intrusions into your life."

On Saturday, police charged Suliga with harassment and causing a public inconvenience after an encounter with the woman at Trump Marina Casino. His lawyer, Edward Kologi, has denied that Suliga made graphically sexual comments to the woman or that his client fought with security guards who came to investigate the woman's complaint.

In the statement released yesterday, Suliga, 45, also said he had sought counseling and was being evaluated at a rehabilitation center in Cranford. He apologized to his family, constituents and colleagues.

"I wish to apologize to them for any embarrassment I have caused them," he wrote.

Yesterday, reports that Suliga had been abusive on at least one other occasion became public.

An unidentified surf shop employee told police that Suliga and a friend had Inappropriately touched and verbally harassed her at the Point Pleasant Beach store on March 3, 2001. She told police that the men smelled of alcohol and, that when they would not stop bothering her, she asked a coworker for help and police were called.

No charges were filed and no arrests were made.

Suliga denied the accusations, saying the matter was "definitely being blown out of proportion."

Philadelphia "Inquirer" Newspaper Article
published between September 25 and October 2, 2003

Jersey Lawmaker Arrested after Casino Altercation

ATLANTIC CITY -A state lawmaker was charged with harassment after he argued with a woman at a casino this weekend and then fought with security guards who came to investigate her complaint.

State Sen. Joseph Suliga, D-Union, also was charged with causing a public inconvenience after his encounter early Saturday with an unidentified West Caldwell woman at Trump Marina Casino. Both charges are disorderly persons offenses.

Suliga, 45, a first-term senator who is up for re-election this fall, would not comment on the case. His attorney, Edward Kologi, said his client was at the casino with some friends and that the harassment charge resulted from a "misunderstanding." He said Suliga meant no harm to the woman, who told security guards that Suliga made an offensive remark.

The guards then approached Suliga, who resisted and pushed them, said Lt. Al Delia Fave, a state police spokesman. The guards detained Suliga and summoned detectives from the Casino Investigation Unit, who filed complaints on behalf of the woman and the security guards.

Suliga was allowed to leave, but he will have to appear in Atlantic City Municipal Court. A hearing date has not been scheduled.

Kologi said Suliga acknowledged an encounter with a woman about 2:30 a.m., but he "may have" thought she was someone else. Kologi also disputed the state police's version of what occurred.

"[The comment] was intended in a lighthearted type of way, and Sen. Suliga sincerely regrets if any offense was taken by the other individual."

Newark "Star-Ledger" Newspaper Article
published October 12, 2003

Suliga Puts Recovery Before Political Goals: Senator says he's seeking alcohol treatment

Sunday, October 12, 2003

BY JENNIFER GOLSON
Star-Ledger Staff

A few weeks after allegations of lewd behavior at an Atlantic City casino resulted in him dropping out of his state Senate race, Joseph Suliga Jr. said he is concentrating on "getting better' and has no definite plans for a political future.

The 45-year-old Linden native has said his recent troubles made him realize he has an alcohol related problem. He declined to go into further detail about what prompted his decision to seek help.

"That's a personal situation, now," he said. He said he will leave such discussions to his sessions with a trained professional.

And he won't speculate on whether he could have won re-election to his 22nd District Senate seat amid the rumor and innuendo.

His focus, he said, is on losing weight and spending time with family and friends, as well as tending to his job as chief financial officer for the city.

He said he has given no thought to a political future, not even about what will become of the $162,485 in campaign contributions he reported as of Oct. 6.

"That is one of the furthest things from my mind," he said in a recent interview.

He did say the money will not go to his replacement candidate, Union County Freeholder Nicholas Scutari. "I think he's a good candidate," he said. "People can contribute to him, based on him." Suliga's friends and colleagues, however, say don't count him out as a future contender.

"I certainly would not rule out a return to politics in the future," said Edward Kologi, his attorney and a lifelong friend.

Linden Mayor John Gregorio also said he thinks Suliga will make a comeback.

"He made one mistake, and I don't think there's many people around who haven't made a mistake in their life," said Gregorio, who was forced to give up his seat as mayor and senator in the early 1980s when he was convicted of conspiracy. He was cleared in 1990.

"I tell Joe - he feels really bad -- sometimes the worst thing in the world happens to you and it ends up being something good," Gregorio said.

Jeff Tittel, director of the state Sierra Club chapter and a former friend of Suliga's -- until they bumped heads on the clean-car bill -- speculated that Suliga's social and professional lives may have collided.

"Here is a guy who worked basically 24/7, when it came to his community and his politics," he said. "I think that may have led to some of his problems. ... You go out after meetings, you may go out to a bar."

The senator disagreed with Tittel's characterization but again refused to discuss what led to his situation.

Suliga is the oldest of four boys who grew up in a lower middle-class neighborhood on West 15th Street.

His civic duties started when he was 13 or 14, holding fund-raising carnivals in his back yard for muscular dystrophy and the Policemen's Benevolent Association. When he was 18, he joined the 7th Ward Democratic Club.

Longtime residents remember seeing him around town as a kid, and when he brought his Italian ice truck to the annual city picnics to hand out free treats.

It's the grassroots politics that Suliga loves, he said, adding that he had an opportunity to run for

Congress but wanted to stay close to home. He has giant three-ring binders filled with yellowed lists of campaign contributors.

Some of those same people he has come to know over the years gathered at his house a few days after he withdrew from the current race.

He said he wanted to thank them for their support and explain why he was dropping out.

"There were a lot of wet eyes in the house that night," Suliga's wife, Annmarie Pakulski, said during an interview with the couple at their Orchard Terrace home.

Suliga said he withdrew because he wanted to concentrate on his alcohol treatment and do what he thought best for the Democratic Party.

"I knew I wouldn't be able to deal with the issues," Suliga said.

He said his opponents would have rehashed that night in Atlantic City, where he had traveled with a group of friends to celebrate Kologi's upcoming wedding.

A woman accused Suliga of making a lewd statement, for which he has since apologized. Kologi will represent him in court later this

month on charges of harassment and creating a public inconvenience.
Days after the Atlantic City complaints, a police report surfaced about an alleged 2001 encounter at a Point Pleasant surf shop, where an 18-year-old sales woman accused Suliga and his friend, John Neshimka, of unruly behavior. There was no arrest, and Suliga denies the report, insisting that the men were shopping with their wives for bathing suits.

"I've been in public service for 27 years, and no one has ever - up until this point - signed a complaint against me, which just shows a lot of this was rumor and innuendo."

Superior Court of New Jersey, Law Division

Order to Show Cause dated September 29, 2003

GENOVA, BURNS &
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Attorneys for Plaintiffs

FILED
SEP 29 2003
EDWARD W. BEGLIN
A.J.S.C.

THE UNION COUNTY DEMOCRATIC COMMITTEE; CHARLOTTE DEFILIPPO, CHAIRPERSON OF THE UNION COUNTY DEMOCRATIC COMMITTEE; THE SOMERSET COUNTY DEMOCRATIC COMMITTEE; ELIA A. PELIOS, CHAIRPERSON OF THE SOMERSET DEMOCRATIC COMMITTEE; THE MIDDLESEX COUNTY DEMOCRATIC COMMITTEE; JOSEPH C. SPICUZZO, CHAIRPERSON OF THE MIDDLESEX COUNTY DEMOCRATIC COMMITTEE; ELIZABETH GENIEVICH; GERALDINE C. FARLEY; AND MAUREEN COXWELL , and JOHN or JANE DOE, Yet To Be Selected DEMOCRATIC PARTY CANDIDATE FOR THE OFFICE OF STATE SENATOR FOR THE 22ND LEGISLATIVE DISTRICT,

Plaintiffs,

-vs-

HON. JOANNE RAJOPPI, CLERK, County of UNION, in Her Official Capacity; HON. ELAINE M. FLYNN, CLERK, COUNTY OF MIDDLESEX, in Her Official Capacity; HON. BRETT A. RADI, CLERK, County of SOMERSET, in His Official Capacity; HON. PETER C. HARVEY, ATTORNEY GENERAL, STATE OF NEW JERSEY, in His Official Capacity; AND HON. RAMON DE LA CRUZ, Director of the New Jersey Division of Elections; in His Official Capacity; and MARTIN L. MARKS, Republican Candidate for New Jersey Senator, 22nd Legislative District,

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
UNION COUNTY

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINTS

DOCKET NO.
UNN-L-3544-03

This matter having been opened to the Court on the application of Genova, Bums & Vernoia (Angelo J. Genova, Esq. attorneys for Plaintiffs, the Hon. Charlotte DeFilippo, Chairperson, the Hon. Elia A. Pelios, Chairperson, the Hon. Joseph C. Spicuzzo, Chairperson, Elizabeth Genievich, Geraldine C. Farley, Maureen Coxwell, and Jane or John Doe, the yet to be selected Democratic Party candidate for the office of New Jersey State Senator for the 22 nd Legislative District in the November 4, 2003 general election, for an Order to Show Cause and Temporary Restraints, ordering Defendants Hon. Joanne Rajoppi, Hon. Elaine M. Flynn, Hon. Brett A. Radi, Hon. Peter C. Harvey, and Hon. Ramon de la Cruz, Director of the New Jersey Division of Elections, and, candidates for the office of New Jersey State Senator for the 22 d Legislative District identified in the caption of this matter, to show cause;

And the Court having considered the Verified Complaint and Exhibits annexed hereto, and Letter Brief submitted in support of Plaintiffs' application; and the Court having considered the pleadings and oral argument submitted in opposition thereto and for other good cause shown;

IT IS ON this 29th day of September, 2003

ORDERED and adjudged that said Defendants are hereby ordered to show cause on the day of October, 2003 before this Court as to why the Court should not enter an Order:

A. Enjoining the Defendant County Clerks, and related election officials from including on the official ballot for the November 4, 2003 election the name of Joseph S. Suliga as the Democratic Party

candidate for the office of the State Senator for the 22nd Legislative District;

B. Declaring that the members of the Union County Democratic Committee, Middlesex County Democratic Committee and Somerset- County Democratic Committee who represent the 22 d Legislative District, may forthwith proceed to select a duly qualified candidate (i.e., John or Jane Doe) to fill the vacancy created by the withdrawal of Joseph S. Suliga as the Democratic Party's candidate for State Senator for the 22nd Legislative District in the November 4, 2003 general election, as a matter of law;

C. Directing that the Defendants replace the name of Joseph S. Suliga on the said ballot with the name of said candidate as the duly qualified candidate selected by the members of the Union County Democratic Committee, Middlesex County Democratic Committee, and Somerset County Democratic Committee, who represent the 22 d Legislative District, to fill the vacancy created by the withdrawal of Joseph S. Suliga as a candidate for State Senator for the 22nd Legislative District in the November 4, 2003 general election.

D. Enjoining said Defendants, and in particular, the Defendant County Clerks, from proceeding to print the official ballot for said general election, including the names of candidates for the office of State Senator for the 22 d Legislative District, to be held on November 4, 2003, until such times as an Order is entered substituting the name of such candidate duly selected by the members of the Union County Democratic Committee, Middlesex County Democratic Committee, and Somerset County Democratic Committee, who represent the 22 d Legislative District, in the place of Joseph S. Suliga as the Democratic Party candidate for the office of State Senator for the 22 d Legislative District;

E. Directing each and every Defendant County Clerk to substitute the name of such candidate so selected in lieu of the name of Joseph S. Suliga on each and every official ballot, whether absentee, military, provisional, emergency, voting machine, ballot card, or otherwise, to be utilized in the November 4, 2003 general election; and

F. Directing each and every Defendant County Clerk to forthwith print the official ballot as aforesaid with the name of said substituted candidate in lieu of that of Joseph S. Suliga as the Democratic Party candidate for State Senator for the 22nd Legislative District.

G. Directing defendant Ramon de la Cruz to certify to the Defendant County Clerks, for placement on the general election ballot, the name of such candidate as is selected by the aforesaid Democratic County Committees of Union, Middlesex and Somerset to replace that of the Hon. Joseph S. Suliga for the office of State Senator, 22nd Legislative District;

IT IS FURTHER ORDERED and adjudged that pending the hearing on the return date of the within Order to Show Cause, said Defendants are hereby:

(a) enjoined from printing or otherwise directing the printing of the official ballot for the November 4, 2003 general election with the name of Joseph S. Suliga as the Democratic party candidate for the office of State Senator pending the selection of a candidate by Plaintiffs to fill the vacancy created by Joseph S. Suliga's withdrawal.

IT IS FURTHER ORDERED and adjudged that a true copy of the within Order to Show Cause, Verified Complaint and supporting papers shall be served on counsel for Defendants this date from the date of this Order; and

T IS FURTHER ORDERED and adjudged that a copy of Defendants responsive briefs and papers in opposition to this Order to Show Cause shall be filed and served as determined in a conference call at 10:00 a.m. on October 2, 2003 from the date of this Order; and

Conformed copies of the written order shall be telefaxed this date by Plaintiffs' counsel this date.

/s/ EDWARD W. BEGLIN, JR.
A.J.S.C.

Certification of Larry Weitzner filed with the Superior Court of New Jersey, Law Division dated October 2, 2003

GRAHAM, CURTIN & SHERIDAN, P.A.
50 West State Street
Suite 1008
Trenton, New Jersey 08608
(609) 695-0098

THE UNION COUNTY DEMOCRATIC COMMITTEE; CHARLOTTE DEFILIPPO, CHAIRPERSON OF THE UNION COUNTY DEMOCRATIC COMMITTEE; THE SOMERSET COUNTY DEMOCRATIC COMMITTEE; ELIA A. PELIOS, CHAIRPERSON OF THE SOMERSET DEMOCRATIC COMMITTEE; THE MIDDLESEX COUNTY DEMOCRATIC COMMITTEE; JOSEPH C. SPICUZZO, CHAIRPERSON OF THE MIDDLESEX COUNTY DEMOCRATIC COMMITTEE; ELIZABETH GENIEVICH; GERALDINE C. FARLEY; AND MAUREEN COXWELL, and JOHN or JANE DOE, Yet To Be Selected DEMOCRATIC PARTY CANDIDATE FOR THE OFFICE OF STATE SENATOR FOR THE 22ND LEGISLATIVE DISTRICT,

Plaintiffs,

-vs-

HON. JOANNE RAJOPPI, CLERK, County of UNION, in Her Official Capacity; HON. ELAINE M. FLYNN, CLERK, COUNTY OF MIDDLESEX, in Her Official Capacity; HON. BRETT A. RADI, CLERK, County of SOMERSET, in His Official Capacity; HON. PETER C. HARVEY, ATTORNEY GENERAL, STATE OF NEW JERSEY, in His Official Capacity; AND HON. RAMON DE LA CRUZ, Director of the New Jersey Division of Elections; in His Official Capacity; and MARTIN L. MARKS, Republican Candidate for New Jersey Senator, 22nd Legislative District,

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
UNION COUNTY

DOCKET NO.
UNN-L-3544-03

CERTIFICATION OF LARRY WEITZNER

I, Larry Weitzner, of full age, hereby certifies as follows:

1. I am a principal of Jamestown Associates, whose principle place of business is 5 Mapleton Avenue, Princeton, New Jersey 08540.

2. I have been involved in all aspects of planning, managing and implementing campaigns for public office, especially the state legislature, for at least twenty years. I am knowledgeable about campaign operations including the relationship between candidate committees, county party committees, state party committees and leadership committees. In my experience where an incumbent does not seek re-election, the incumbent financially assists the successor candidate for the party.

3. In that regard, I reviewed the June 23, 2003 campaign finance report of Suliga for Senate. It was the most recent on file the Election Law Enforcement Commission. It has a balance of approximately $189,000.

4. Since fundraising functions am usually scheduled for August and early September, the balance in that account at the present is most likely significantly higher.

5. Since Senator Suliga is withdrawing, the democratic party leaders will insist that Suliga assist the replacement candidate.

6. Suliga's district includes three separate counties and a number of municipalities.

7. In order to comply with campaign finance laws, Suliga will most likely dispose of his committee's funds in the following way.

$7,200	To replacement candidate
$25,000	Middlesex County Democrats
$7,200	Union County Democrats
$7,200	Somerset County Democrats
$25,000	Democratic State Party
$25,000	Senate Democratic Leadership Committee
$35.00	Various municipal Party Committees
$131,600	

8. In this instance the committees listed above may in turn make unlimited expenditures in support of the replacement except for Middlesex and Somerset Counties Party Committees (see chart). They are limited to $7,200 per election pursuant to N.J.A.C. 19:25-11.7.

9. In my view this finding gives any replacement candidate very unfair advantage which can not be offset by Marks in this instance.

10. The replacement can also seek contributions from supporters of Suliga who have already contributed the maximum.

I hereby certify that the above statements made by me are true. I am aware that if any of the above statements made by me are willfully false, I am subject to punishment.

/s/ Larry Weitzner

CERTIFICATION PURSUANT TO R. 1:4-4(c)

I certify that the facsimile signature of Larry Weitzner is genuine. I have known Mr. Weitzner for many years and I am familiar with his signature. These statements made by me are true to the best of my knowledge. I am aware that if any such statements made by me are willfully false, I am subject to punishment.

/s/ Peter G. Sheridan

Dated: October 2, 2003

ADJUSTED CONTRIBUTION LIMITS FOR NON-GUBERNATORIAL CANDIDATES AND COMMITTEES

Entities Receiving Contributions

Entities Making Contribution	Candidate Committee	Political Committee	Continuing Political Committee	Legislative Leadership Committee	State Political Party Committee	County Political Party Committee	Municipal Political Party Committee
Individual to:	$2,200 per election	$7,200 per election	$7,200 per election	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Corporation or Union to:	$2,200 per election	$7,200 per election	$7,200 per election	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Association or Group to:	$2,200 per election	$7,200 per election	$7,200 per election	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Candidate Committee to:	$7,200 per election	$7,200 per election	$7,200 per election	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Political Committee	$7,200 per election	$7,200 per election	$7,200 per election	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Continuing Political Committee	$7,200 per election	$7,200 per election	$7,200 per election	$25,000 per year	$25,000 per year	$25,000 per year	$5,000 per year
Legislative Leadership Committee to:				NO LIMITS			
State Political Party Committee to:				NO LIMITS			
County Political Party Committee to:	NO LIMITS, except those set forth in N.J.A.C. 19:25-11.7. Additionally, a county political party committee may only contribute $5,000 to municipal committees outside its own county						
Municipal Political Party Committee to:				NO LIMITS			
National Political Party Committee to:	$7,200 per election	$7,200 per election	$7,200 per election	$25,000 per year	$50,000 per year	$25,000 per year	$5,000 per year

REPORT OF CONTRIBUTIONS AND EXPENDITURES

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
P.O. BOX 185
TRENTON, NEW JERSEY 08625-0185

REPORT FILED:
- [ ] 29-DAY PRE
- [ ] 11-DAY PRE
- [x] 20-DAY POST

ELEC I.D. #
FOR STATE USE ONLY

POLITICAL PARTY, IF ANY: Democratic
ELECTION DATE: 6-3-03

REPORT QUARTER
- [ ] April 15
- [ ] July 15
- [ ] Oct. 15
- [ ] Jan. 15

CANDIDATE OR COMMITTEE NAME: Suliga for Senate

Amendment
- [ ] Yes
- [ ] No

STREET ADDRESS: 311 West Henry Street

CITY: Linden
STATE: NJ
ZIP CODE: 07036

For State Use Only
ELEC RECEIVED
JUN 23 2003

COUNTY: Union
ELECTION DISTRICT OR MUNICIPALITY: 22nd Legislative District

ELECTION TYPE: Primary
OFFICE SOUGHT: State Senate

DUPLICATE

SUMMARY TABLES

DO NOT ATTEMPT TO COMPLETE TABLES I & II UNTIL NECESSARY SCHEDULES HAVE BEEN COMPLETED

TABLE I. RECEIPTS		THIS REPORT	CUMULATIVE TO DATE
1. MONETARY CONTRIBUTIONS OF $400 OR LESS		$ 8,590.00	$ 56,053.89
2. MONETARY CONTRIBUTIONS IN EXCESS OF $400 [Schedule A]		$ 73,450.00	$ 304,280.00
3. IN-KIND CONTRIBUTIONS OF $400 OR LESS		$ -0-	$ -0-
4. IN-KIND CONTRIBUTIONS IN EXCESS OF $400 [Schedule B]		$ -0-	$ -0-
5. LOANS RECEIVED IN EXCESS OF $400 [Schedule C]		$ -0-	$ -0-
6. SUB TOTAL - CONTRIBUTIONS (ADD LINES 1 THRU 5)		$ 82,040.00	$ 360,333.89
7. REFUND OF EXCESSIVE CONTRIBUTIONS [Adjustment Schedule]	(-)	$ 6,600.00	$ 11,900.00
8. TOTAL CONTRIBUTIONS		$ 75,440.00	$ 348,433.89
9. ADD FUNDS TRANSFERRED FROM PRIOR CAMPAIGN	(+)	$ -0-	$ 212,827.74
10. TOTAL RECEIPTS	(ADD LINE 8 + LINE 9)	$ 75,440.00	$ 561,261.63

TABLE II. EXPENDITURES			
1. DISBURSEMENTS -CAMPAIGN EXPENSES [Schedule 1(D)]		$ 19,633.22	$ 124,895.22
2. DISBURSEMENTS - OTHER [Schedule 2(D)]		$ 244.85	$ 17,845.63
3. DISBURSEMENTS - CONTRIBUTIONS MADE TO OTHER CANDIDATES/COMMITTEES [Schedule 3(D)]		$ 25.00	$ 23,720.39
4. CONTRIBUTIONS MADE ON BEHALF OF OTHERS [Pro Rata Amount Schedules 1(D) and 2(D)]		$ -0-	$ -0-
5. IN-KIND CONTRIBUTIONS OF $400 OR LESS (TABLE I, LINE 3)		$ -0-	$ -0-
6. IN-KIND CONTRIBUTIONS IN EXCESS OF $400 (TABLE I, LINE 4)		$ -0-	$ -0-
7. SUB TOTAL - DISBURSEMENTS (ADD LINES 1 THRU 6)		$ 19,903.07	$ 166,461.24
8. REFUNDED DISBURSEMENTS [Schedule F]	(-)	$ 100.00	$ 1,268.28
9. TOTAL EXPENDITURES	(LINE 7 MINUS LINE 8)	$ 19,803.07	$ 165,192.96

New Jersey Election Law Enforcement Commission, January, 2002 — FORM R-1

Report of Contributions and Expenditures of Candidate Joseph Suliga, dated June 21, 2003

STATEMENT OF CAMPAIGN DEPOSITORY AND CAMPAIGN TREASURER

Opening Balance, this report
(Insert closing balance of last report, or, if this is the first report filed by this entity for this election, insert zero.) $ 133,805.99

Funds Transferred from Prior Campaign $ -0-

Deposits (Include interest.) $ 82,140.00

Disbursements (Include bank charges.) $ 26,503.07

Closing Balance, this Report $ 189,442.92

First Union Bank | 1417506749 | Suliga for Senate
NAME OF BANK OR DEPOSITORY | ACCOUNT NUMBER | NAME OF ACCOUNT

201 North Wood Avenue Linden, NJ 07036
ADDRESS OF BANK OR DEPOSITORY

Joseph C. Bodek | (908) 474-8443
NAME OF TREASURER | *TELEPHONE NUMBER (DAY)

311 West Henry Street Linden, NJ 07036
ADDRESS OF TREASURER

CERTIFICATION

I certify that the statements on this document are true, and that the contribution amounts received conform with the limitations designated by law. I am aware that if any of the statements are willfully false, I may be subject to punishment.

DATE	PRINT FULL NAME	SIGNATURE
6-21-03	Joseph S. Suliga	
6-21-03	Joseph C. Bodek	

(CANDIDATE) / (TREASURER)

DECLARATION OF FINAL REPORT

If this is the final report, sign applicable Declaration below as well as Certification above. Chapter 65 of the Laws of 1993 requires that all filing entities continue to file reports with the Commission until all campaign business is wound up and the fund is dissolved.

☐ I certify that all contributions or other monies received by this election fund have been disbursed, that there are no outstanding loans or other obligations, and that the election fund has wound up its business and has been dissolved.

DATE	PRINT FULL NAME	SIGNATURE

(CANDIDATE) / (TREASURER)

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

Full Text of and Statement to New Jersey Senate Bill No. 2096, introduced November 18, 2002

SENATE, No. 2096

STATE OF NEW JERSEY

210th LEGISLATURE

INTRODUCED NOVEMBER 18,2002

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Mercer)
Senator ROBERT E. LITTELL
District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS
Prohibits filling of vacancy among candidates if vacancy occurs between 5 1 st and 30th day prior to general election, except under certain circumstances; provides reimbursement of certain election-related expenses.

CURRENT VERSION OF TEXT
As introduced.

THE GREAT SEAL OF THE STATE OF NEW JERSEY

(Sponsorship Updated As Of: 12/17/2002)

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.
Matter underlined <u>thus</u> is new matter.

AN ACT prohibiting the filling of certain candidate vacancies except under certain circumstances, amending R.S.19:13-20 and supplementing Chapter 13 of Title 19 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.19:13-20 is amended to read as follows:

19:13-20. In the event of a vacancy, howsoever caused, among candidates nominated at primaries, which vacancy shall occur not later than the 51st day before the general election, or in the event of inability to select a candidate because of a tie vote at such primary, a candidate shall be selected in the following manner:

a. (1) In the case of an office to be filled by the voters the entire State, the candidate shall be selected by the State committee of the political party wherein such vacancy has occurred.

(2) In the case of an office to be filled by the voters of a single and entire county, the candidate shall be selected by the county committee in such county of the political party wherein such vacancy has occurred.

(3) In the case of an office to be filled by the voters of a portion of

the State comprising all or part of two or more counties, the candidate shall be selected by those members of the county committees of the party wherein the vacancy has occurred who represent those portions of the respective counties which are comprised in the district from which the candidate is to be elected.

(4) In the case of an office to be filled by the voters of a portion of a single county, the candidate shall be selected by those members of the county committee of the party wherein the vacancy has occurred who represent those portions of the county which are comprised in the district from which the candidate is to be elected.

At any meeting held for the selection of a candidate under this subsection, a majority of the persons eligible to vote thereat shall be required to be present for the conduct of any business, and no person shall be entitled to vote at that meeting who is appointed to the State committee or county committee after the seventh day preceding the date of the meeting.

In the case of a meeting held to select a candidate for other than a Statewide office, the chairman of the meeting shall be chosen by majority vote of the persons present and entitled to vote thereat. The chairman so chosen may propose rules to govern the determination of credentials and the procedures under which the meeting shall be conducted, and those rules shall be adopted upon a majority vote

the persons entitled to vote upon the selection. If a majority vote is not obtained for those rules, the delegates shall determine credentials and conduct the business of the meeting under such other rules as may be adopted by a majority vote. All contested votes taken at the selection meeting shall be by secret ballot.

b. (1) Whenever in accordance with subsection a. of this section members of two or more county committees are empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairmen of said county committees, acting jointly not later in any case than the seventh day following the occurrence of the vacancy, to give notice to each of the members of their respective committees who are so empowered of the date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given.

(2) Whenever in accordance with the provisions of subsection a. of this section members of a county committee are empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairman of such county committee, not later in any case than the seventh day following the occurrence of the vacancy, to give notice to each of the members of the committee who are so empowered of the

date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given.

(3) A county committee chairman or chairmen who call a meeting pursuant to paragraph (1) or (2) of this subsection shall not be entitled to vote upon the selection of a candidate at such meeting unless he or they are so entitled pursuant to subsection a.

(4) Whenever in accordance with the provisions of subsection a. of this section the State committee of a political party is empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairman of that State committee to give notice to each of the members of the committee of the date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given.

c. Whenever a selection is to be made pursuant to this section to fill a vacancy resulting from inability to select a candidate because of a tie vote at a primary election, the selection shall be made from among those who have thus received the same number of votes at the primary.

d. A selection made pursuant to this section shall be made not later than the 48th day preceding the date of the general election, and a

statement of such selection shall be filed with the Secretary of State or the appropriate county clerk, as the case may be, not later than said 48th day, and in the following manner:

(1) A selection made by a State committee of political party shall be certified to the Secretary of State by the State chairman of the

political party.

(2) A selection made by a county committee of a political party, or a portion of the members thereof, shall be certified to the county clerk of the county by the county chairman of such political party; except that when such selection is of a candidate for the Senate or General Assembly or the United States House of Representatives the county chairman shall certify the selection to the State chairman of such political party, who shall certify the same to the Secretary of State.

(3) A selection made by members of two or more county committees of a political party acting jointly shall be certified by the chairmen of said committees, acting jointly, to the State chairman of such political party, who shall certify the same to the Secretary of State.

e. A statement filed pursuant to subsection d. of this section shall state the residence and post office address of the person so selected, and shall certify that the person so selected is qualified under the laws of this State to be a candidate for such office, and is a member of the political party filling the vacancy. Accompanying the statement the person endorsed therein shall file a certificate stating that he is qualified under the laws of this State to be a candidate for the office mentioned in the statement, that he consents to stand as a candidate at

the ensuing general election and that he is a member of the political party named in said statement, and further that he is not a member of, or identified with, any other political party or any political organization espousing the cause of candidates of any other political party, to which shall be annexed the oath of allegiance prescribed in R.S.41:1-1 duly taken and subscribed by him before an officer authorized to take oaths in this State. The person so selected shall be the candidate of the party for such office at the ensuing general election,

f. Notwithstanding the provisions of this section to the contrary. no vacancy among candidates seekiniz election at a general election shall be filled if the vacancy occurs later than the 51st day before the day of the election, except that a vacancy created not later than the 30th day before the election because the candidate dies or becomes physically or mentally incapacitated may be filled. Any vacancy occurring among such candidates shall be filled no later than the 30th day before the day of the election in the manner provided by law for filling vacancies in the office in which the vacancy occurs before the 5 1 st day before the day of a general election.

(cf: P.L.1988,c.126,s.1)

2. (New section) Whenever a vacancy occurs among candidates

seeking election at a general election later than the 51st day but no later than the 30th day before the day of the election because of the death or physical or mental incapacitation of the candidate and a

candidate is selected in the manner permitted by subsection f. of R.S.19:13-20 to fill the vacancy and replace the deceased or incapacitated candidate on all ballots and other election materials, the political party of the selected candidate shall be responsible for reimbursing all effected counties and municipalities in a timely manner for all expenses associated with changing the name of the candidate on all ballots and other election materials associated with the general election on an expedited basis and for the express mailing of new absentee ballots to registered voters who already requested and received such ballots and the return by express mail of the changed voted ballots to the county boards of elections.

3. This act shall take effect immediately.

STATEMENT

This bill provides that no vacancy among candidates seeking election at a general election can be filled if the vacancy occurs between the 51st day and the 30th day before the day of the election, unless the vacancy is created because the candidate dies or becomes physically or mentally incapacitated.

R.S.19:13-20 provides a procedure for filling vacancies among candidates between the time the candidate is nominated for public

office and the 5lst day before the day of the general election. Because current law does not address the filling of a vacancy occurring between the 51st day and 30th day before the general election, the purpose of this bill is to make it clear that no replacement of candidates within that period is to be permitted unless the vacancy is created because the candidate dies or becomes physically or mentally incapacitated.

The bill also provides that whenever a vacancy occurs among candidates between the 51st and 30th day before the day of the election because of the death or physical or mental incapacitation of the candidate, the political party of a replacement candidate would be responsible for reimbursing all affected counties and municipalities in a timely manner for all expenses associated with changing the name of the candidate on all ballots and other election materials associated with the general election on an expedited basis and for the express mailing of new absentee ballots to registered voters who already requested and received such ballots and the return by express mail of the changed voted ballots to the county boards of elections.

Full Text of and Statement to New Jersey Assembly Bill No. 2878, introduced October 10, 2002

ASSEMBLY, No. 2878

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED OCTOBER 10, 2002

Sponsored by:
Assemblyman RICK MERKT
District 25 (Morris)
Assemblyman GUY R. GREGG
District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS
Prohibits filling of vacancy among candidates if vacancy occurs within 51 days prior to day of general election.

CURRENT VERSION OF TEXT
As introduced.

THE GREAT SEAL OF THE STATE OF NEW JERSEY

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.
Matter underlined <u>thus</u> is new matter.

AN ACT prohibiting the filling of certain candidate vacancies, amending R.S.19:13-20 and supplementing chapter 13 of Title 19 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. (New section) The Legislature finds and declares that:

a. The Legislature takes great exception to the findings and orders of the New Jersey Supreme Court in The New Jersey Democratic Party, Inc., et al. v. Hon. David Sampson, Attorney General, State of New Jersey. et al., issued on October 2, 2002.

b. In this case involving the substitution of a candidate for United States Senate from New Jersey within 51 days prior to the day of the general election, the Court clearly overstepped its authority and blatantly disregarded the intention of the Legislature when it enacted and subsequently amended the deadline in R.S.19:13-20.

c. It is the role of the Legislature, and not the Judiciary, to write new law or amend any current law, including laws pertaining to elections, and any attempt to disregard the 51 day deadline clearly provided by statute constitutes a fatal defect in the role of the Judiciary.

d. It is not the role of the Judiciary to re-interpret the mandatory nature of the term "shall" as used in regard to the observation of the

51 day deadline and read for it the permissiveness of the term "may,"
thus allowing one candidate to replace another so soon before the electorate is to register its choice on the day of the general election.
e. Therefore, changes to R.S. 19:13-20, as written by the Legislature
and not the Judiciary, are necessary to make it clear that no replacement of candidates within 51 days prior to the day of the general election is to be permitted under any circumstances.

2. R.S.19:13-20 is amended to read as follows:
19:13-20. In the event of a vacancy, howsoever caused, among candidates nominated at primaries, which vacancy shall occur not later
than the 51st day before the general election, or in the event of inability to select a candidate because of a tie vote at such primary, a
candidate shall be selected in the following manner:
a. (1) In the case of an office to be filled by the voters of the entire
State, the candidate shall be selected by the State committee of the political party wherein such vacancy has occurred.
(2) In the case of an office to be filled by the voters of a single and
entire county, the candidate shall be selected by the county committee

in such county of the political party wherein such vacancy has occurred.

(3) In the case of an office to be filled by the voters of a portion of the State comprising all or part of two or more counties, the candidate shall be selected by those members of the county committees of the party wherein the vacancy has occurred who represent those portions of the respective counties which are comprised in the district from which the candidate is to be elected.

(4) In the case of an office to be filled by the voters of a portion of a single county, the candidate shall be selected by those members of the county committee of the party wherein the vacancy has occurred who represent those portions of the county which are comprised in the district from which the candidate is to be elected.

At any meeting held for the selection of a candidate under this subsection, a majority of the persons eligible to vote thereat shall be required to be present for the conduct of any business, and no person shall be entitled to vote at that meeting who is appointed to the State committee or county committee after the seventh day preceding the date of the meeting.

In the case of a meeting held to select a candidate for other than a Statewide office, the chairman of the meeting shall be chosen by majority vote of the persons present and entitled to vote thereat. The chairman so chosen may propose rules to govern the determination of credentials and the procedures under which the meeting shall be conducted, and those rules shall be adopted upon a majority vote

of the persons entitled to vote upon the selection. If a majority vote is not obtained for those rules, the delegates shall determine credentials and conduct the business of the meeting under such other rules as may be adopted by a majority vote. All contested votes taken at the selection meeting shall be by secret ballot.

b. (1) Whenever in accordance with subsection a. of this section members of two or more county committees are empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairmen of said county committees, acting jointly not later in any case than the seventh day following the occurrence of the vacancy, to give notice to each of the members of their respective committees who are so empowered of the date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given.

(2) Whenever in accordance with the provisions of subsection a. of this section members of a county committee are empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairman of such county committee, not later in any case than the seventh day following the occurrence of the vacancy, to give empowered notice to each of the members of the committee who are so of the date, time and place of the meeting at which the selection will be

made, that meeting to be held at least one day following the date on which the notice is given.

(3) A county committee chairman or chairmen who call a meeting pursuant to paragraph (1) or (2) of this subsection shall not be entitled to vote upon the selection of a candidate at such meeting unless he or they are so entitled pursuant to subsection a.

(4) Whenever in accordance with the provisions of subsection a. of this section the State committee of a political party is empowered to select a candidate to fill a vacancy, it shall be the responsibility of the chairman of that State committee to give notice to each of the members of the committee of the date, time and place of the meeting at which the selection will be made, that meeting to be held at least one day following the date on which the notice is given.

c. Whenever a selection is to be made pursuant to this section to fill a vacancy resulting from inability to select a candidate because of a tie vote at a primary election, the selection shall be made from among those who have thus received the same number of votes at the primary.

d. A selection made pursuant to this section shall be made not later than the 48th day preceding the date of the general election, and a statement of such selection shall be filed with the Secretary of State or the appropriate county clerk, as the case may be, not later than said 48th day, and in the following manner:

(1) A selection made by a State committee of political party shall be certified to the Secretary of State by the State chairman of the political party.

(2) A selection made by a county committee of a political party, or a portion of the members thereof, shall be certified to the county clerk of the county by the county chairman of such political party; except that when such selection is of a candidate for the Senate or General Assembly or the United States House of Representatives the county chairman shall certify the selection to the State chairman of such political party, who shall certify the same to the Secretary of State.

(3) A selection made by members of two or more county committees of a political party acting jointly shall be certified by the chairmen of said committees, acting jointly, to the State cha sirman ofuch political party, who shall certify the same to the Secretary of State.

e. A statement filed pursuant to subsection d. of this section shall state the residence and post office address of the perso so selected, and shall certify that the person so selected is qualified under the laws of this State to be a candidate for such office, and is a member of the political party filling the vacancy. Accompanying the statement the person endorsed therein shall file a certificate stating that he is qualified under the laws of this State to be a candidate for the office mentioned in the statement, that he consents to stand as a candidate at

the ensuing general election and that he is a member of the political party named in said statement, and further that he is not a member of, or identified with, any other political party or any political organization espousing the cause of candidates of any other political party, to which shall be annexed the oath of allegiance prescribed in R.S.41:1-1 duly taken and subscribed by him before an officer authorized to take oaths in this State. The person so selected shall be the candidate of the party for such office at the ensuing general election.

f. Notwithstanding the provisions of this section to the contrary, no vacancy among candidates seeking election at a general election, no matter the cause, shall be filled if the vacancy occurs between the 51st day prior to the day of that election and the day of the election.

(cf: P.L.1988, c.126, s.1)

3. This act shall take effect immediately.

STATEMENT

This bill provides that no vacancy among candidates seeking election at a general election, no matter the cause, can be filled if the vacancy occurs between the 51 st day prior to the day of that election and the day of the election.

R.S.19:13-20 provides a procedure for filling vacancies among candidates between the time the candidate is nominated for public office and the 51st day prior to the day of the general election. Since current law does not provide a procedure for filling such a vacancy occurring after the 51st day prior to the general election, the purpose of this bill is to make it clear that no replacement of candidates within that 51 day period is to be permitted under any circumstances.

The bill is prompted by the action of the New Jersey Supreme Court in The New Jersey Democratic Party. Inc., et al. v. Hon. David Sampson. Attorney General. State of New Jersey, et al, issued on October 2, 2002. In this case involving the substitution of a candidate for United States Senate from New Jersey within 51 days prior to the day of the general election the Court clearly overstepped its authority and blatantly disregarded the intention of the Legislature when it enacted and subsequently amended the deadline in R.S.19:13-20.

Letter of Clerk of the Court dated October 24, 2003 Advising Petitioner's Counsel of Record of Disposition of Application to the United States Supreme Court for Emergency Relief

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the court
(202) 479-3011

October 24, 2003

Mr. Steele Chadwell
134 Nassau Street
Princeton, NJ 08542

Re: Martin L. Marks
v. Union County Democratic Committee, et al.
Application No. 03A351

Dear Mr. Chadwell:

The application for a stay pending filing and disposition of a petition for writ of certiorari in the above-entitled case has been presented to Justice Souter, who on October 24, 2003 denied the application.

This letter has been sent to those designated on the attached notification list.

Sincerely,

William K. Suter, Clerk

by
Troy D. Cahill
Staff Attorney

Supreme Court, U.S.
FILED
FEB 17 2004
OFFICE OF THE CLERK

No. 03-1020

In the
Supreme Court of the United States

THE HONORABLE MARTIN L. MARKS, DDS,

Petitioner,

– v.–

UNION COUNTY DEMOCRATIC COMMITTEE, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF NEW JERSEY

BRIEF IN OPPOSITION

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February 17, 2004

Democratic County Committee Respondents

The Union County Democratic Committee; Charlotte DeFillippo, Chairperson of the Union County Democratic Committee; the Somerset County Democratic Committee; Elia A. Pelios, Chairperson of the Somerset County Democratic Committee; the Middlesex County Democratic Committee; Joseph C. Spicuzzo, Chairperson of the Middesex County Democratic Committee; Elizabeth Genievich; Geraldine C. Farley; Maureen Coxwell; and Nicholas P. Scutari, as the Democratic Party's Candidate for the Office of State Senator in the 22nd Legislative District

QUESTION PRESENTED

Whether the New Jersey Supreme Court offended federal constitutional requirements when it affirmed a trial court's decision that interpreted New Jersey *state* law to permit a local political party to name a new candidate for a *state* office in the place of the previously nominated candidate who had withdrawn his candidacy.

CORPORATE DISCLOSURE STATEMENT

The Union County Democratic Committee has no parent corporations and no publicly owned company holds 10% or more of the company's stock.

The Somerset County Democratic Committee has no parent company and no publicly owned company holds 10% or more of the company's stock.

The Middlesex County Democratic Committee has no parent company and no publicly owned company holds 10% or more of the company's stock.

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STATEMENT

This is an election case. Petitioner seeks review of an order of the New Jersey Supreme Court that denied Petitioner's application for emergency relief from a trial court's order and decision that interpreted a provision of New Jersey election law. Specifically, the lower court interpreted a provision of New Jersey election law to permit a local political party to name a new candidate for state office in the place of the previously nominated candidate who withdrew his candidacy 39 days before the general election. The court below, relying on *Democratic Party v. Samson*, 175 N.J. 178 *cert denied*, 532 U.S. 1083 (2002), found that it was administratively feasible to replace the withdrawn candidate's name on the ballot with the name of the replacement candidate selected by the local political party, and therefore, permitted the replacement candidate's name to appear on the ballot for the general election. The lower court's decision is a reasonable interpretation of state law, presents no important federal question, and does not offend prior decisions of this Court, or any decisions of any other federal or state court. Thus, this Court lacks jurisdiction to review this matter.

This case emanates from the decision of the Hon. Joseph S. Suliga, the New Jersey Democratic Party's candidate for the office of State Senate in New Jersey's 22nd Legislative District, to withdraw as a candidate for that office. State Senator Suliga, the incumbent State Senator, was duly elected by the Democratic voters of the 22nd Legislative District in the June 4, 2003 primary election. The only other candidate certified to be on the ballot for the November 4, 2003 general election for the office of State Senator for the 22nd Legislative District, aside from Senator Suliga, was Petitioner Martin Marks. On Friday, September 26, 2003, Senator Suliga informed the Chairpersons of the Democratic County Committees for the counties comprising the 22nd Legislative District of his decision to withdraw as a candidate.

On Monday, September 29, 2003, on the application of the Democratic County Committees, the Chairpersons of the Democratic County Committees, three voters residing in the 22nd Legislative District and the future replacement candidate (collectively "Respondents"), the Superior Court of New Jersey, Law Division, Union County, entered an order for temporary restraints that enjoined the three county clerks from printing and distributing official election ballots containing the name of "Joseph S. Suliga" as the New Jersey Democratic Party's Candidate for State Senator in the 22nd Legislative District. On October 1, 2003, the members of the respective Democratic County Committees representing the 22nd Legislative District selected the Hon. Nicholas P. Scutari to fill the vacancy created by State Senator Suliga's departure.

After hearing oral argument on Respondents' petition for an Order to Show Cause on October 3, 2003, the superior court entered an order permanently enjoining the printing and distribution of official ballots with the name of "Joseph S. Suliga" and directing the printing and distribution of official ballots with the name of "Nicholas P. Scutari" as the Democratic Party's candidate for State Senator.

Four days later, on October 7, 2003, Petitioner filed a Notice of Appeal in the New Jersey Superior Court, Appellate Division seeking emergent relief. Petitioner simultaneously sought a stay from the lower court. On October 8, 2003, the lower court denied Petitioner's application for a stay of its order finding that the case law was well-settled on the matter. Thereafter, the appellate court denied Petitioner's emergent application on October 10, 2003. In so doing, the appellate court summarily affirmed the lower court's decision and specifically cited *Samson, supra*. On October 14, 2003, four days after the appellate court's decision was rendered, Petitioner filed an application for appeal and emergent relief to the New Jersey Supreme Court. On October 15, 2003, the New Jersey Supreme Court denied Petitioner's appeal and request for

emergent relief, with costs. On October 22, 2003, one week after the New Jersey Supreme Court denied Petitioner's appeal, and with less than two weeks before the general election, Petitioner filed an emergency application to Justice David H. Souter, as single Circuit Justice for the Third Circuit, seeking a stay of enforcement pending the filing and disposition of a Petition for Writ of Certiorari. Respondents filed a brief in opposition to Petitioner's stay application on October 24, 2003. On that same day, Justice Souter denied Petitioner's application for a stay. Nearly three months later, Petitioner filed the instant Petition for Writ of Certiorari, requesting this Court both overturn the New Jersey Supreme Court's order in this case, and revisit its decision to deny certiorari in *Samson* that was rendered over a year ago.

ARGUMENT

Shortly over one year ago, in *Democratic Party v. Samson*, 175 N.J. 178, *cert. denied*, 532 U.S. 1083 (2002), this Court denied certiorari. In that remarkably similar case, the New Jersey Supreme Court construed the same provision of New Jersey election law to permit a state political party to fill a vacancy created by the withdrawal of a candidate for office of United States Senate. Petitioner, who was not a party to the *Samson* case, now asks this Court to revisit its decision to deny certiorari in *Samson*. Strikingly, Petitioner does so in the context of review a *state* court's interpretation of *state* election law as applied to an election for *state* office. However, the lower court's decision represents an interpretation of state law that is entirely consistent with its settled past precedent. Contrary to Petitioner's contention, there is nothing in the state court's order to distinguish it from the work of state courts around the country when called upon to apply state laws to varying circumstances. Thus, as this Court correctly recognized in *Samson,* further review by this Court is simply not warranted.

Petitioner's attempt to characterize this matter as one implicating the protections of U.S. Const. Art. 1 § 4, cl. 1 is futile and misplaced. Article 1 § 4, cl. 1, which governs federal congressional elections, has no bearing, whatsoever, on this matter which concerns a *state* court's interpretation of *state* election law as it applies to an election for *state* office. Likewise, Petitioner's claim that a federal question warranting this Court's review is present in this matter is not salvaged by his contention that the lower court's order offends the Due Process Clause of the Fifth and Fourteenth Amendments. Without any legal support, and based on a factual premise which, at best, is speculative, Petitioner claims that voters' ability to be informed about the candidates for election will be impaired by the lower court's ruling. However, the factual record, the precedent of this Court, and plain common sense,

all dictate that the lower court's decision did not infringe upon any voter's ability to become informed about the relevant candidates for this elected office.

Nor does Petitioner's assertion that the lower court's order offends both the Equal Protection Clause of the Fifth and Fourteenth Amendments and the First Amendment rescue his claim that review by this Court is warranted. Petitioner's equal protection and First Amendment claims, which are premised on the allegation that there is a potential under New Jersey's state campaign finance laws for a replacement candidate to raise more funds than a candidate selected in the primary election, is based on a myriad of speculative facts. Moreover, the lower court's decision does not frustrate or depart from this Court's well-settled equal protection and First Amendment precedent, but instead furthers that precedent. In short, the alleged speculative and potential disparities that may result in the ability of candidates to raise funds under New Jersey's Campaign Finance Act, that form the basis of Petitioner's equal protection and First Amendment claims, even if credited, are far outweighed by the furtherance of the legitimate and paramount state interest of ensuring voter choice in elections.

1. The New Jersey Supreme Court's Reasonable Interpretation of New Jersey Election Law Does Not Present a Federal Question Warranting Review By This Court.

Petitioner's primary argument is that the lower court, in relying upon *Samson* to permit a vacancy for the state elected office to be filled 39 days prior to the general election, usurped the New Jersey Legislature's power under U.S. Const. Art. I., § 4, cl. 1. *See* Pet. At 12. The *Samson* case addressed the issues of whether a vacancy created within 48 days of a general election, by the withdrawal of a political party's

candidate for the office of United States Senate, could be filled by a political party committee pursuant to the procedures set forth in *N.J.S.A.* 19:13-20.

Petitioner fails to recognize the simple fact that unlike the election in *Samson*, which involved the filling of a vacancy for a candidate for the office of United States Senator, a federal congressional office that is specifically covered by Article I § 4 cl. 1, the present matter involves the filling of a vacancy for a candidate for the office of *state* senator. Thus, U.S. Const. Art. 1, § 4, cl. 1 has no bearing, whatsoever, on this matter because it does not involve a congressional election. This matter only concerns issues of interpretation of *state* law in the course of a *state* election, and accordingly, does not warrant review by this Court.

The authority of state courts to review election laws is no different than their authority to review any other laws; indeed, "interpretation of laws is the proper and peculiar province of the Courts." The Federalist No. 78 (Alexander Hamilton); see *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177-178 (1803). As the Court noted in *McPherson v. Blackner*, 146 U.S. 1 (1892), a state supreme court is constitutionally permitted to interpret a state law governing the appointment of electors. Indeed, this Court has recognized that "[w]e are not authorized to revise the conclusions of the state court on these matters of local law." *Id.* at 23.

Without any legal support, Petitioner asks this Court to embroil itself in this state law election matter solely because Petitioner disagrees with the outcome achieved in the state courts and the state legislature. *See* Pet. at 14-15. However, "[r]espect for the independence of state courts, as well as the avoidance of rendering advisory opinions, have been the cornerstones of this Court's refusal to decide cases where there is an adequate and independent state ground." *Michigan v. Long*, 463 U.S. 1032, 1040 (1983).

This Court's review of state court judgments has long been informed by the recognition that this Court has "no authority" to review a state supreme court's interpretation of state law. *See O'Connell v. Kirchner*, 513 U.S. 1303 (1995) (Stevens, J.) (denying petition for stay of Illinois Supreme Ct. decision on an issue of Illinois law). "None are more conscious of the vital limits on judicial authority than are the members of this Court." *Bush v. Gore*, 531 U.S. 98, 111 (2000).

2. The Decision Below is a Reasonable Interpretation of State Law

In *Samson*, the New Jersey Supreme Court specifically addressed the circumstances under which a vacancy, created between the 48th day and the general election, can be filled pursuant to the procedures set forth in a New Jersey statute, namely, *N.J.S.A.* 19:13-20. *Samson*, 175 N.J. at 194. In short, the New Jersey Supreme Court held that where "it is *administratively feasible*" to replace a candidate's name on the ballot during the period between the 48th day and the general election, the procedures set forth in *N.J.S.A.* 19:13-20 should be followed, notwithstanding the 48 day time period set forth in the statute. *Id* at 194 (emphasis added). The lower court, relying on *Samson*, found that it was administratively feasible to replace Joseph Suliga's name on the ballot with that of Nicholas Scutari under the facts and circumstances of the case before it.

In permitting Joseph Suliga to be replaced on the ballot by Nicholas Scutari, the lower court furthered several important principles articulated throughout New Jersey's election laws that were specifically recognized by the *Samson* Court. The *Samson* Court found that meaningful voter choice in elections is a paramount interest set forth in New Jersey's election laws and that New Jersey's election laws give political parties a right to select a candidate when a vacancy occurs. *Id*. The lower court's decision in this matter protects

both the paramount interest of providing meaningful voter choice in elections, as well as the rights of political parties to select candidates. In this matter, aside from State Senator Suliga, Petitioner was the only other candidate on the ballot for the office of State Senate for the 22nd Legislative District. Overturning the lower court's decision, which permitted the Respondents to replace State Senator Suliga's name on the general election ballot, would not only deprive the voters in the 22nd Legislative District, including Respondents Gunievich, Farley and Coxwell, of a meaningful choice, but it would also deprive them of any choice at all.

Moreover, the *Samson* Court explicitly instructed that if its interpretation of New Jersey's election laws was not consistent with the New Jersey Legislature's intent, then the New Jersey Legislature should act accordingly and amend the law. *See Samson*, 175 N.J. at 195, 199. To date, and well over a year since the *Samson* decision was rendered, the New Jersey Legislature has not passed any laws overturning the decision. This inaction provides further evidence that the *Samson* Court's interpretation of the 48 day time period in *N.J.S.A.* 19:13-20 is the appropriate interpretation of that state statute. While apparently cognizant of the failed attempts in the New Jersey Legislature to change New Jersey's election laws, Petitioner, nonetheless, asks this Court to engage in this matter and essentially re-write state law. However, because the lower court reasonably construed *N.J.S.A.* 19:13-20 consistent with the state legislature's intent and the *Samson* Court's instruction, the Court should refrain from reviewing the decision.

3. The Decision of the New Jersey Supreme Court Does Not Violate the Due Process Clause of the United States Constitution

Moreover, Petitioner's allegations of due process violations rely on wholly speculative factual premises that are inconsistent with the factual record established in the lower court. Petitioner purports to argue that the Due Process Clauses of the Fifth[1] and Fourteenth Amendments have been violated because voters will not have adequate time to become informed about the candidates for the state office if a vacancy is permitted to be filled within 48 days prior to the general election. Petitioner states a particular concern that absentee civilian and military ballot voters will not have adequate time to make an informed choice about the candidates for the election. However, Petitioner cites no law in support of his position, and the precedent of this Court, the facts in the record and common sense, all dictate that with over a month before the election, the lower court properly found that there was ample time for all voters, including absentee voters in the 22nd Legislative District, to make an informed choice.[2]

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[1] Petitioner fails to demonstrate how the Fifth Amendment, which addresses the United States Congress's powers to make laws that would violate due process, has any bearing, whatsoever, on this state law matter.

[2] The trial court stated:

> Full voter choice, therefore, dictates the substitution be permitted and the general statutory intent and underlying purpose of the elections law will be furthered. My conclusion is that the substitution of a candidate *roughly one month* before election day of this year will not significantly impact upon the voters' ability to learn about the candidates, evaluate them and have sufficient time and opportunity to reach an informed decision and unhurried choice.

See PA77-78.

Petitioner further purports to champion the rights of absentee civilian and military voters, yet the operative facts demonstrate, and the trial court correctly recognized that their ability to become informed about the candidates for the pending election would not be infringed. The concern of absentee civilian and military voters' ability to become informed about candidates when a vacancy occurs within little over a month before a general election was before this Court when it denied certiorari in *Samson*. The facts before the lower court in this matter were, again, even more compelling than those before this Court when it denied certiorari in *Samson*. In the *Samson* case, there were over 19,000 absentee ballot requests. Significantly, at the time of the *Samson* Court's opinion, approximately 1,700 had already been mailed to absentee voters and ballots had been returned. *Samson*, 174 N.J. at 196. At the time the trial court granted respondent's application, no absentee ballots had been mailed to absentee civilian or military voters and less than 500 voters had made requests for absentee ballots.[3]

Certainly, the less than five hundred (500) absentee ballot voters in this matter were not disenfranchised by the lower court's decision permitting a replacement candidate to fill a vacancy 39 days before the general election. More significantly, unlike the facts in *Samson*, at the time of the filing of

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[3] The trial court requested that the three County Clerks provide it with the numbers of absentee and military service ballots requested as of October 2, 2003. Middlesex County, which contains two (2) municipalities in the 22nd Legislative District, Dunellen Borough and Middlesex Borough, had received a total of twenty-four (24) requests for civilian absentee ballots and one (1) request for a military ballot. Somerset County, which contains two (2) municipalities in the 22nd Legislative District, Green Brook Township and North Plainfield Borough, had received a total of forty-one (41) requests for civilian absentee ballots and zero (0) requests for military ballots. Union County, which contains the largest number of voters in the 22nd Legislative District, had received three hundred thirty-nine (339) requests for civilian absentee ballots and one (1) request for a military ballot. P[illegible] (A23-26).

this action, no absentee ballots had been mailed. See PA75. In fact, Union County, the County in this matter whose geography comprised the vast majority of the legislative district's votes, had yet to even print its ballots. See PA74.

The decisions of this Court have consistently reflected faith in the ability of voters to inform themselves about campaign issues within a month before an election. *Anderson v. Celebrezze*, 460 U.S. 780, 797 (1983). Indeed, this Court has recognized that "there is a clear indication that campaign spending and voter education occur largely during the month before an election." *Id.* quoting *Dunn v. Blumstein*, 405 U.S. 330 (1972). Moreover, common sense and awareness of modern communication methods dictate that all voters in the 32nd Legislative District would have ample opportunity to make an informed choice, despite the fact that the lower court permitted a replacement candidate with just a month before the general election. This Court has specifically recognized that "today even trivial" details about candidates for election are "instantaneously communicated nationwide in both verbal and visual form." *Anderson*, 460 *U.S.* at 797. "[A]s a matter of practical politics, the electoral process contains its own cure for voters' ignorance about a particular candidate. Unknown candidates simply do not win large numbers of votes. A key goal of every political campaign is to promote the candidate's name identification among the electorate." *Anderson*, 460 U.S. at 799, n. 25. In this regard, it is important to note that Petitioner's ability to inform voters of his candidacy and position on the issues was, in no way, impeded by the lower court's decision in this matter.

Accordingly, Petitioner has not demonstrated that the lower court's decision permitting a replacement candidate to fill a vacancy with little over a month before a general election would either inhibit voters' ability to be informed about a candidate for election or violate the Due Process Clause of the Fifth and Fourteenth Amendments.

4. The Decision of the New Jersey Supreme Court Does Not Violate the Equal Protection Clause of the United States Constitution

Petitioner's equal protection argument also rests upon a wholly speculative factual premise concerning events, which even to this late date, have not, and may never, occur. Moreover, even if the potential dissimilarities that Petitioner claims establish his equal protection claim were ripe for review, they do not constitute a violation of equal protection and certainly do not stray from the equal protection analysis prescribed by this Court and accordingly, do not warrant consideration by this Court.

Petitioner argues that his equal protection rights were violated because Suliga Scutari, as the replacement candidate, had the potential to raise more money than Petitioner did under New Jersey's Campaign Finance Act. Yet, Petitioner's argument that his equal protection rights were violated is premised upon a myriad of speculations about events that Petitioner has not established ever occurred. Specifically, Petitioner relies upon the Certification of Larry Weitzman which states that it was theoretically possible, under New Jersey's Campaign Finance Act, for $132,000.00 of the $189,000.00 raised by State Senator Suliga to be transferred to candidate Scutari. Petitioner further speculates, without any support, that the donors who contributed to State Senator Suliga would likely contribute, again, to candidate Scutari and accordingly, candidate Scutari would be able to raise more funds than Petitioner. Importantly, no proofs toward this end were established before the lower court.

The lower court correctly recognized that "as of this moment" none of Petitioner's rights had been harmed and thus, Petitioner's equal protection argument was premature. PA78. It is well-settled that to establish a constitutional claim "first and foremost, there must be alleged (and ultimately

proved) an 'injury in fact' — a harm suffered by the plaintiff that is '*concrete*' and '*actual or imminent*', not '*conjectural*' or *hypothetical*." *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) *quoting Los Angeles v. Lyons*, 461 U.S. 95, 101-102 (1983) (emphasis added). Because Petitioner has not demonstrated that his fears have been realized, the lower court correctly found that Petitioner's equal protection claim is premature. Moreover, even if Petitioner's claim was ripe, Petitioner has failed to demonstrate that the lower court's decision results in a departure from the equal protection analysis articulated by this Court, thus warranting reversal.

In analyzing equal protection claims, this Court has instructed that courts must start with the assumption that legislatures have acted constitutionally. *Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). Under traditional equal protection principles, distinctions need only be drawn in such a manner as to "bear some rational relation to a legitimate state end." *Id.* "Classifications are set aside only if they are based solely on reasons totally unrelated to the pursuit of the State's goals and only if no grounds can be conceived to justify them." *Id.* This Court has held that "[t]he Equal Protection Clause allows the States considerable leeway to enact legislation that may appear to affect similarly situated people differently." *Id.* at 963. A departure from this traditional equal protection analysis is appropriate only when the challenged statute places burdens on suspect classes or fundamental rights. *Id.* at 963 *citing San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973).

Contrary to Petitioner's contention, the lower court's decision does not offend the traditional equal protection analysis of this Court, but instead, it furthers it. Strikingly, Petitioner has failed to demonstrate that he has suffered the infringement of a fundamental right. Indeed, this Court has recognized that political candidacy is not a fundamental right and that any restriction upon that right would not be

subject to a stringent standard of review. *Bullock v. Canton*, 405 U.S. 134, 142-43 (1972). Moreover, this Court has held that "the existence of barriers to a candidate's access to the ballot does not itself compel close scrutiny." *Clements*, 457 U.S. at 963.

Petitioner falls far short in his attempt to demonstrate that his alleged disparate treatment under New Jersey's campaign finance laws has placed any condition on the voters' rights to exercise the franchise or that any votes have been quantitatively diluted which would warrant strict scrutiny review. *See Bullock*, 405 U.S. at 143. The potential disparity in the ability to raise campaign funds in no way affects the rights or ability of the voters to exercise the right to franchise. Petitioner argues that voters' ability to make an informed choice in the election is somehow tied to Petitioner's ability to raise funds for his candidacy. However, the ability of voters to exercise the franchise and make an informed choice is not strongly impacted by the ability of candidates to raise identical campaign funds. It is simple political reality that in the vast majority of elections candidates neither raise, nor spend, equal amounts of money. Thus, Petitioner cannot demonstrate that a potential disparity in the ability of candidates to raise money requires the most stringent review by this Court.

Accordingly, because the lower court's ruling advances the paramount interest of promoting meaningful voter choice in elections, an interest which is clearly outweighed by a potential disparity in the abilities of candidates to raise equal campaign funds, the lower court's decision does not offend equal protection.[4] In fact, if Petitioner were to be granted the

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[4] The New Jersey Superior Court, Appellate Division, considered the issue of whether potential disparities in the ability of a replacement candidate and a candidate selected in a primary election to raise funds under New Jersey's gubernatorial campaign finance laws violated equal protection in *Schundler v. Paulsen*, 340 N.J. Super. 319 (App. Div. 2001).

relief he has requested, voters in the 22nd Legislative District would be deprived of any choice at all, let alone a meaningful choice for the office of state senator.

The Appellate Division held that no equal protection violation existed because the potential disparities in funding were rationally related to legitimate government interests of voter choice and the public policy of New Jersey favoring contested elections. *Id.*

CONCLUSION

For the foregoing reasons, the Respondents respectfully request that Petitioner's Writ of Certiorari and request for other relief be denied.

Respectfully submitted,

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